

# United States Senate

WASHINGTON, DC 20510

April 10, 2014

The Honorable Tom Vilsack  
US Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20010

The Honorable Ernest Moniz  
US Department of Energy  
100 Independence Ave., S.W.  
Washington, D.C. 20585

The Honorable Gina McCarthy  
US Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Secretary Vilsack, Secretary Moniz, and Administrator McCarthy:

We are writing today in regards to the president's plan released on March 28, 2014, to reduce methane emissions. In particular, we are concerned about potential actions against the agriculture community to regulate methane and other greenhouse gas (GHG) emissions, which could severely impact the livestock industry.

The president's Climate Action Plan "Strategy to Reduce Methane Emissions" targeted a number of industries for methane emission reductions, including agriculture. Specifically the plan calls on the U.S. Department of Agriculture (USDA), Environmental Protection Agency (EPA), and Department of Energy (DOE) to outline a "Biogas Roadmap" to reduce dairy sector GHG emissions by 25 percent by 2020 through voluntary strategies.

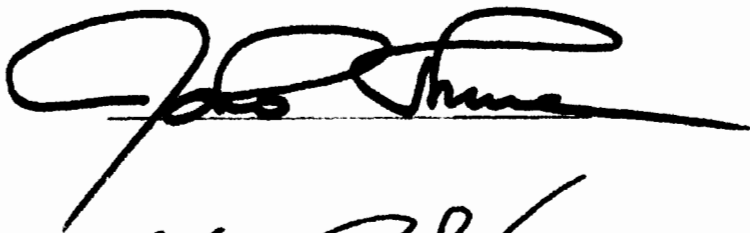
Federal regulations of GHGs in the agriculture sector would have detrimental implications on livestock operations across the country. In 2008, as part of its Advanced Notice of Proposed Rulemaking to regulate GHGs under the Clean Air Act, the EPA deliberated regulating agriculture-related emissions, which would have required farmers to purchase expensive permits. It was estimated that these top-down regulations would have cost medium-sized dairy farms with 75 to 125 cows between \$13,000 and \$22,000 a year, and medium-sized cattle farms with 200 to 300 cows between \$17,000 and \$27,000. We reject the notion that the EPA should, absent express authorization from Congress, seek to regulate the agriculture sector in this manner.

The agriculture community is committed to environmental stewardship, which is evidenced by the 11 percent reduction in agriculture-related methane emissions since 1990. It is our hope that the EPA, USDA, and DOE will work with Congress and the agriculture industry to outline voluntary measures that can be taken to reduce emissions without imposing heavy-handed regulations on farms across America. We respectfully request that you commit in writing to refrain from proposing new regulations, guidelines, or other mandatory requirements on methane or other GHGs from the agriculture industry.

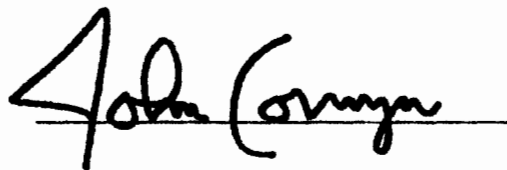


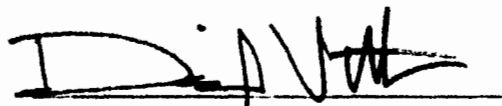
Thank you for your consideration and attention to this matter.

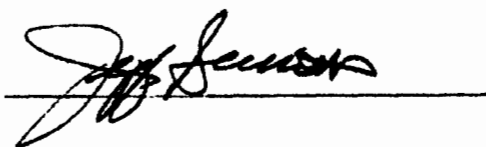
Sincerely,

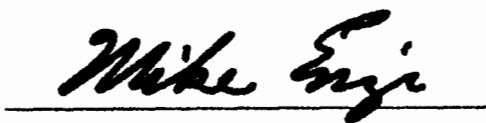


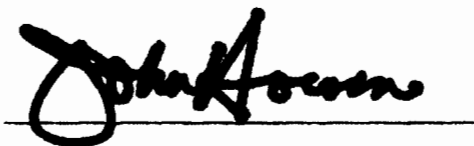


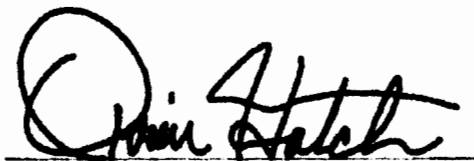






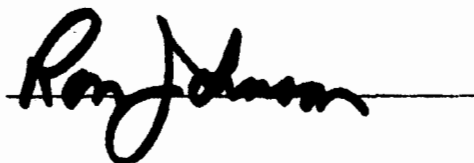




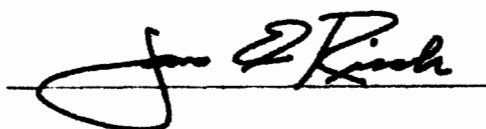


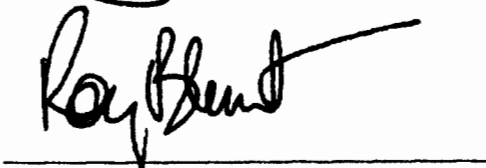


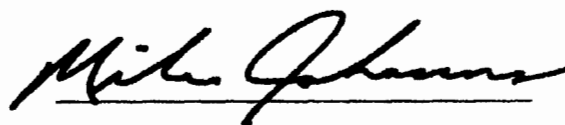


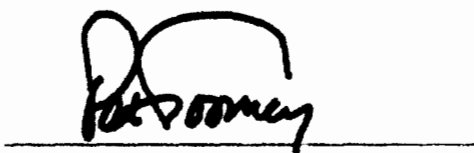
















May 2, 2014

The Honorable John Thune  
United States Senate  
511 Dirksen Senate Office Building  
Washington, D.C. 20510-4105

Dear Senator Thune:

Thank you for the letter, cosigned by your colleagues, and the opportunity to engage with you on the Strategy to Reduce Methane Emissions. As outlined in the document, **"This strategy addresses emissions from agriculture exclusively through voluntary actions, not through regulations."**

Voluntary, partnership-based approaches to address emissions from agricultural sources have been shown to be effective, which is why the approaches for agriculture expand efforts to optimize and deploy waste-to-energy technologies and enhance manure management. Wider deployment of biogas systems and other technologies that capture methane for renewable heat, power, fuel, and chemicals can help methane producers, including the agriculture sector, realize triple-bottom-line benefits for the community, the environment, and profitability of the operation; a win, win, win.

The Strategy reflects a strong public-private partnership with the dairy industry focused on accelerating deployment of cost-effective technologies which reduce emissions across the supply chain through innovative research, as well as technical and financial assistance. Along with enhanced manure management practices, which continue a long tradition of environmental stewardship in the agriculture sector, biogas systems allow dairy producers to tap into a \$3 billion annual market potential with farm-based energy production and additional marketable co-products, such as nutrient separation and recovery. Those benefits are why the National Milk Producers Federation, representing 32,000 dairy farmers, applauded the release and the action set forth in the Methane Strategy.<sup>1</sup>

The Department of Agriculture, Environmental Protection Agency, and Department of Energy (DOE), through voluntary programs, like AgSTAR and our collaborative efforts with the dairy industry to develop a Biogas Roadmap, are poised to work with the agricultural community to reduce greenhouse gas emissions. In addition, with the recent passage of the Agriculture Act of 2014, we have additional tools to continue supporting construction of biogas utilization projects, where appropriate. The DOE also continues to fund projects to research, develop and demonstrate these technologies.

<sup>1</sup> <http://www.nmpf.org/latest-news/press-releases/mar-2014/dairy-industry-applauds-white-house-strategy-methane-emissions>.

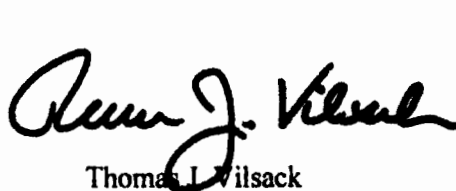


The Honorable John Thune

Page 2

Again, thank you for your letter. We appreciate the opportunity to respond to your questions on the Strategy to Reduce Methane Emissions. An identical letter has been sent to your colleagues.

Sincerely,



Thomas J. Vilsack  
Secretary of Agriculture



Gina McCarthy  
Administrator of the  
Environmental Protection  
Agency



Ernest J. Moniz  
Secretary of Energy





May 2, 2014

The Honorable Michael B. Enzi  
United States Senate  
379A Russell Senate Office Building  
Washington, D.C. 20510-5004

Dear Senator Enzi:

Thank you for the letter, cosigned by your colleagues, and the opportunity to engage with you on the Strategy to Reduce Methane Emissions. As outlined in the document, **"This strategy addresses emissions from agriculture exclusively through voluntary actions, not through regulations."**

Voluntary, partnership-based approaches to address emissions from agricultural sources have been shown to be effective, which is why the approaches for agriculture expand efforts to optimize and deploy waste-to-energy technologies and enhance manure management. Wider deployment of biogas systems and other technologies that capture methane for renewable heat, power, fuel, and chemicals can help methane producers, including the agriculture sector, realize triple-bottom-line benefits for the community, the environment, and profitability of the operation; a win, win, win.

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<sup>2</sup> <http://www.nmpf.org/latest-news/press-releases/mar-2014/dairy-industry-applauds-white-house-strategy-methane-emissions>.



The Honorable Michael B. Enzi  
Page 2

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Sincerely,



Thomas J. Vilsack  
Secretary of Agriculture

Gina McCarthy  
Administrator of the  
Environmental Protection  
Agency



Ernest J. Moniz  
Secretary of Energy



United States Senate  
WASHINGTON, DC 20510

September 11, 2014

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
U.S. EPA Headquarters – William J. Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator McCarthy,

We are writing to request that the Environmental Protection Agency (EPA) provide a 60 day extension of the comment period for the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units." While we appreciate EPA granting an initial 120 day comment period, the complexity and magnitude of the proposed rule necessitates an extension. This extension is critical to ensure that state regulatory agencies and other stakeholders have adequate time to fully analyze and comment on the proposal. It is also important to note that the challenge is not only one of commenting on the complexity and sweeping scope of the rule, but also providing an opportunity to digest more than 600 supporting documents released by EPA in support of this proposal.

The proposed rule regulates or affects the generation, transmission, and use of electricity in every corner of this country. States and stakeholders must have time to fully analyze and assess the sweeping impacts that the proposal will have on our nation's energy system, including dispatch of generation and end-use energy efficiency. In light of the broad energy impacts of the proposed rule, state environmental agencies must coordinate their comments across multiple state agencies and stakeholders, including public utility commissions, regional transmission organizations, and transmission and reliability experts, just to name a few. The proposed rule requires a thorough evaluation of intra- and inter-state, regional, and in some cases international energy generation and transmission so that states and utilities can provide the most detailed assessments on how to meet the targets while maintaining reliability in the grid. This level of coordination to comment on an EPA rule is unprecedented, extraordinary, and extremely time consuming.

It is also important to note that the proposed rule imposes a heavy burden on the states during the rulemaking process. If the states want to adjust their statewide emission rate target assigned to them by EPA, they must provide their supporting documentation for the adjustment during the comment period. The EPA proposal provides no mechanism for adjusting the state emission rate targets once they are adopted based on the four building blocks. So the states need enough time to digest the rule, fully understand it, and then collect the data and justification on why their specific target may need to be adjusted, and why the assumptions of the building blocks may not apply to their states. This cannot be adequately accomplished in only 120 days.

Thank you for your consideration of this request.

Sincerely,







Lee Hershman

Alfred M. Conell

Dan Allen

Joe Donnelly

William J. E.

Tom Allen

Jim Johnson

Pat Roberts

John Conyn

John Bozinger

John H.

Boucarh

748

May 9 1982

Tr / L

Mark R. Wener

MARK ROYER

Paul Hershman

Chuck Grassley

Chris Hatch

Clara Kim

Roy Johnson

Lynette

Ann Alexander

Mike Cryer

Don Cook



Jim E. Kink

Mike Johnson  
Sayby Chaulkin

Michael B. Eij

Jerry Moran

Jefferson

Jim McLaughlin

John McLean  
McN

Jimmy Dean

Tom Cohen

Mark Boych  
Ken Hill

Rob Portman

John Bannan  
Paul Carter

John F. Felt

John Hosen

Richard Shelby

Bob Sum

Kay Bent  
Rand Paul

Jim S

Larry Hoo

Pat Rooney





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

September 16, 2014

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of September 11, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy requesting an extension of the comment period for the proposed Clean Power Plan, which was signed on June 2, 2014, and published in the Federal Register on June 18, 2014. The Administrator asked that I respond on her behalf.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, to learn more about what programs are already working to reduce carbon pollution. In addition, during the week of July 29, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings.

These hearings and these meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse and interconnected.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- E-mail: [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov). Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.



- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at [bailey.kevinj@epa.gov](mailto:bailey.kevinj@epa.gov) or at (202) 564-2998.

Sincerely,



Janet G. McCabe  
Acting Assistant Administrator



# United States Senate

WASHINGTON, DC 20510

August 2, 2013

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy,

We are writing to express our concern about the Environmental Protection Agency's proposed Formaldehyde Emissions Standards for Composite Wood Products Implementing and Certifying rules, published in the Federal Register on June 10, 2013.

The Formaldehyde Emissions Standards for Composite Wood Products Act was enacted to provide authority to the EPA to implement rules regarding formaldehyde emissions from composite wood panels and products. The goal of the legislation was to implement nationwide the California formaldehyde standards already in existence. The California emissions standards are currently the most stringent in the world.

Finished goods manufacturers build their products from already certified composite panels. These certified panels are then further processed within finished goods manufacturing, sealing the finished product and reducing emissions even more.

The EPA rules as proposed differ significantly from the California rule in their applicability, requirements and costs. These changes will impact over a million US manufacturing jobs. By erroneously assuming both the size of the newly regulated stakeholders group, as well as the technical feasibility of the exempted resins, the EPA failed to account for this adverse impact on jobs. The significant reduction of flexibility and increased costs for finished goods manufacturers without corresponding benefits is contrary to the policy of this Administration.

To reduce the unnecessary burdens of the rule without compromising public health and safety; the EPA staff should follow the California approach, which would eliminate redundant testing and recertifying of components by finished goods manufacturers. As EPA develops the final rule, we hope you will carefully consider these comments and focus on providing appropriate health and environmental protections to our nation's citizens without jeopardizing industries, jobs or our economy.

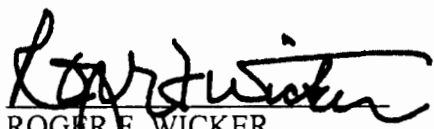
Thank you for your commitment to addressing this important issue.

Sincerely,

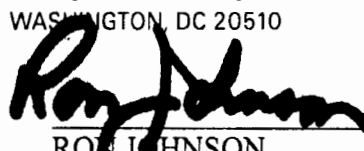


# United States Senate

WASHINGTON, DC 20510



ROGER F. WICKER  
United States Senator



RON JOHNSON  
United States Senator



ROY BLUNT  
United States Senator

cc: Howard Shelanski, Administrator, Office of Information & Regulatory Affairs, OMB





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

**NOV 21 2013**

**OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION**

The Honorable Ron Johnson  
United States Senate  
Washington, DC 20510

Dear Senator Johnson:

Thank you for your letter of August 2, 2013, to Gina McCarthy, Administrator of the U.S. Environmental Protection Agency, expressing your concerns about the proposed regulations regarding formaldehyde emissions from composite wood products. As the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, the Administrator has asked me to respond to your letter.

We welcome your views as we consider comments on our proposed regulations. In response to your concerns, it is important to note that the Formaldehyde Standards for Composite Wood Products Act (Toxic Substances Control Act Title VI) departs from the California Air Resources Board's regulation in several important ways. It is true that Title VI establishes formaldehyde emission standards for hardwood plywood, particleboard and medium-density fiberboard that are identical to the emission standards in CARB's Airborne Toxics Control Measure. Nevertheless, Congress, although cognizant of the CARB exemption for laminated products, chose to include laminated products on the list of composite wood products to be regulated under TSCA Title VI. With respect to these laminated products, Congress did provide the EPA with the authority to modify the definition of laminated product and exempt some or all laminated products from the definition of hardwood plywood pursuant to a rulemaking under TSCA Title VI, which shall be promulgated "in a manner that ensures compliance with the [statutory] emission standards." The information available to the EPA did not indicate that laminated products would be in compliance with the emission standards, and therefore the agency did not propose an exemption for all laminated products from the proposed regulations. We did, however, propose to exempt laminated products that are made with compliant cores and laminated with "no-added-formaldehyde" resins because we concluded that such exemptions would be consistent with the statutory directive.

Based on comments, letters and other feedback the EPA has received since the rule was proposed, there seems to be some confusion as to whom the rule would apply. The proposed testing and certification requirements would apply only to those entities that make hardwood plywood (including non-exempt laminated products), particleboard and medium-density fiberboard. Those who manufacture finished goods from already certified hardwood plywood, particleboard, or medium-density fiberboard or exempt laminated products, and process them into finished goods by cutting, shaping or other similar activities would not be covered by the testing and certification requirements. Furthermore, retailers that simply purchase finished products and offer them for sale are not subject to the testing or certification requirement, only keeping records of their purchase of compliant products.

In the development of the proposals, the EPA engaged numerous stakeholders, including small businesses, many of which served as Small Entity Representatives providing input to the Small Business



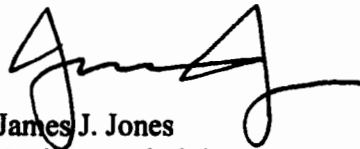
Advocacy Review Panel for these proposed regulations. The EPA took their input, and the SBAR Panel deliberations, into account in designing the proposed exemption for laminated products.

The EPA is very sensitive to the potential impact of these requirements on the American manufacturing sector. In ongoing efforts to reach out to potentially affected stakeholders, the EPA has met and continues to meet with companies and trade associations that represent, among other members, producers of laminated products. As part of this effort, the EPA has also specifically requested data on formaldehyde emissions from laminated products in addition to seeking comments and information on the proposed definition of laminated products. In particular, the EPA is trying to understand why some manufacturers of laminated products can comply by switching to resins with no added formaldehyde, while others believe this is not a feasible alternative.

The EPA has requested public comment on all aspects of the proposed regulations, which are based on the information available at the time of proposal. The comment period for the implementing regulations has been twice extended at the request of a number of industry stakeholders and closed on October 9, 2013. The EPA will carefully consider all information it received and incorporate its findings in the final rule.

Again, thank you for your letter and I hope the information provided is helpful. If you have any further questions, please contact me or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read 'James J. Jones', with a stylized, flowing script.

James J. Jones  
Assistant Administrator



AL-15-000-1557

RON JOHNSON  
WISCONSIN

# United States Senate

WASHINGTON, DC 20510

October 30, 2014

COMMITTEE  
BUDGET

COMMERCE, SCIENCE  
AND TRANSPORTATION

FOREIGN RELATIONS

HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

SMALL BUSINESS AND  
ENTREPRENEURSHIP

Ms. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Mail Stop # 1101A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460-0001

Dear Ms. McCarthy:

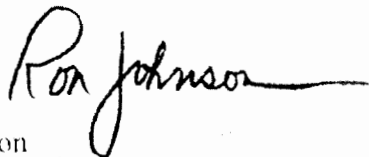
I am contacting you regarding the Regional Tribal Operations Committee (RTOC), which is made up of employees of USEPA Region 5 and the 35 federally recognized tribes in the region.

According to the Region 5 RTOC charter, this group meets three times a year. On August 20, members of my staff contacted Region 5 staff to inquire about the location and start time for one of these meetings. The Region 5 staff informed my staff that "staffer" attendance at this meeting would not be "productive," and we were discouraged from attending the meeting.

You can understand my confusion: A taxpayer-funded federal agency is holding meetings with tribes whose members are also my constituents. I was surprised to learn that, as an elected representative of the people of Wisconsin, I am not allowed to attend or be represented by staff at these meetings.

I respectfully ask you to share with me the reasoning or basis for why congressional attendance is discouraged. I look forward to your response.

Sincerely,



Ron Johnson  
United States Senator

WASHINGTON OFFICE  
325 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-6323

OSHKOSH OFFICE  
219 EAST WASHINGTON AVENUE, SUITE 100  
OSHKOSH, WI 54901  
(920) 230-7250

MILWAUKEE OFFICE  
817 EAST WISCONSIN AVENUE  
ROOM 408  
MILWAUKEE, WI 53202  
(414) 226-7282





United States Environmental Protection Agency  
Regional Administrator  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

NOV 23 2014

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your October 30, 2014 letter concerning the Regional Tribal Operations Committee meetings that U.S. Environmental Protection Agency convenes with representatives of federally recognized tribal governments. EPA Region 5 participates in these meetings twice each year as part of the Agency's responsibility to engage in regular and meaningful consultation and collaboration with federally recognized tribes. The meetings are conducted on a government to government basis between EPA and tribal governments.

As we discussed with your office, the Regional Tribal Operations Committee is comprised of tribal leaders and Region 5 senior leadership. Regional Tribal Operations Committee meetings focus on protection of human health and the environment in Indian country – primarily issues relating to implementation of tribal environmental programs and federal environmental protection programs in Indian country. While these meetings are not open to the public or the press, summaries of the meetings are public records.

If you would find it helpful, I would welcome an opportunity to meet with you to discuss the purpose and structure of these meetings, as well as to provide more detailed information about our work with tribal governments in EPA Region 5.

Again, thank you for your letter. If you have further questions, please feel free to contact me or your staff may contact Ronna Beckmann or Eileen Deamer, the Region 5 Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Hedman", is written over a horizontal line.

Susan Hedman  
Regional Administrator



AL-11-000-9233

**THE WHITE HOUSE OFFICE  
REFERRAL**

May 31, 2011

**TO:** ENVIRONMENTAL PROTECTION AGENCY

**ACTION COMMENTS:**

**ACTION REQUESTED:** APPROPRIATE ACTION

**REFERRAL COMMENTS:**

**DESCRIPTION OF INCOMING:**

**ID:** 1056373

**MEDIA:** EMAIL

**DOCUMENT DATE:** May 26, 2011

**TO:** PRESIDENT OBAMA

**FROM:** THE HONORABLE KENT CONRAD  
UNITED STATES SENATE  
WASHINGTON, DC 20510

**SUBJECT:** WRITES TO ASK THE ADMINISTRATION TO RAPIDLY FINALIZE A RULE  
REGULATING COAL COMBUSTION RESIDUES (CCRs) UNDER SUBTITLE D THE  
NON-HAZARDOUS SOLID WASTE PROGRAM OF THE RESOURCE CONSERVATION  
AND RECOVERY ACT (RCRA)

**COMMENTS:**

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**PROMPT ACTION IS ESSENTIAL - IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.**

**RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT, ROOM 88, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500  
FAX A COPY OF RESPONSE TO: (202) 456-5881**



**THE WHITE HOUSE  
DOCUMENT MANAGEMENT AND  
TRACKING WORKSHEET**



**DATE RECEIVED:** May 31, 2011

**CASE ID:** 1056373

**NAME OF CORRESPONDENT:** THE HONORABLE KENT CONRAD

**SUBJECT:** WRITES TO ASK THE ADMINISTRATION TO RAPIDLY FINALIZE A RULE REGULATING COAL COMBUSTION RESIDUES (CCRs) UNDER SUBTITLE D THE NON-HAZARDOUS SOLID WASTE PROGRAM OF THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	RESPONSE CODE	DATE COMPLETED
LEGISLATIVE AFFAIRS	ROB NABORS	ORG	05/31/2011		

**ACTION COMMENTS:**

ENVIRONMENTAL PROTECTION AGENCY	A	05/31/2011
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**ACTION COMMENTS:**

**ACTION COMMENTS:**

**ACTION COMMENTS:**

**ACTION COMMENTS:**

**COMMENTS:** 43 ADDL SIGNEES

**MEDIA TYPE:** EMAIL

**USER CODE:**

ACTION CODES	DISPOSITION		
<b>A</b> = APPROPRIATE ACTION <b>B</b> = RESEARCH AND REPORT BACK <b>D</b> = DRAFT RESPONSE <b>I</b> = INFO COPY/NO ACT NECESSARY <b>R</b> = DIRECT REPLY W/ COPY <b>ORG</b> = ORIGINATING OFFICE	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	<b>A</b> = ANSWERED OR ACKNOWLEDGED <b>C</b> = CLOSED <b>X</b> = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES

REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 85, EEOB.

**Scanned By  
ORM**



# United States Senate

WASHINGTON, DC 20510

May 26, 2011

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Obama:

In November, the public comment period concluded on the Environmental Protection Agency's (EPA's) proposed rulemaking for the regulation of coal combustion residues (CCRs). We write to ask the Administration to rapidly finalize a rule regulating CCRs under subtitle D, the non-hazardous solid waste program of the Resource Conservation and Recovery Act (RCRA).

The release of CCRs from the Tennessee Valley Authority impoundment in December 2008 properly caused the EPA to consider whether CCR impoundments and landfills should meet more stringent standards. All operators should meet appropriate standards, and those who fail to do so should be held responsible. We believe regulation of CCRs under subtitle D will ensure proper design and operations standards in all states where CCRs are disposed.

A swift finalization of regulations under subtitle D offers the best solution for the environment and for the economy. The environmental advantages of the beneficial use of CCRs in products such as concrete and road base are well-established. For example, a study released by the University of Wisconsin and the Electric Power Research Institute in November 2010 found that the beneficial use of CCRs reduced annual greenhouse gas emissions by an equivalent of 11 million tons of carbon dioxide, annual energy consumption by 162 trillion British thermal units, and annual water usage by 32 billion gallons. These numbers equate to removing 2 million cars from our roads, saving the energy consumed by 1.7 million American homes, and conserving 31 percent of the domestic water used in California.

We are concerned that finalizing a rule regulating CCRs under subtitle C of RCRA rule would permanently damage the beneficial use market. Since the EPA first signaled its possible intention to regulate CCRs under subtitle C, financial institutions have withheld financing for projects using CCRs, and some end-users have balked at using CCRs in their products until the outcome of the EPA's proposed rulemaking is known. Already, beneficial use of CCRs has decreased, and landfill disposal has increased. This result is counterproductive but likely to continue as long as the present regulatory uncertainty persists.



The Honorable Barack Obama  
May 26, 2011  
Page 2

State environmental protection agencies have cautioned the EPA that regulating CCRs under subtitle C will overwhelm existing hazardous waste disposal capacity and strain budget and staff resources. Moreover, the bureaucratic and litigation hurdles involved in a subtitle C rule could lead to long delays before storage sites are upgraded or closed, resulting in slower environmental protection.

In two prior reports to Congress, the EPA concluded that disposed CCRs did not warrant regulation under subtitle C of RCRA. Despite this prior conclusion, the EPA's proposed subtitle C option would regulate CCRs more stringently than any other hazardous waste by applying the subtitle C rules to certain inactive and previously closed CCR units. The EPA has never before interpreted RCRA in this manner in over 30 years of administering the federal hazardous waste rules. The subtitle C approach is not supportable given its multiple adverse consequences and the availability of an alternative, less burdensome regulatory option under RCRA's non-hazardous waste rules that, by the EPA's own admission, will provide an equal degree of protection to public health and the environment.

In conclusion, we request that the Administration finalize a subtitle D regulation as soon as possible. The states and the producers of CCRs have raised concerns that should be corrected in a final subtitle D rule, including ensuring that any subtitle D regulations are integrated with and administered by state programs. Subtitle D regulation will improve the standards for CCR disposal, ensure a viable market for the beneficial use of CCRs, and achieve near-term meaningful environmental protection for disposed CCRs.

Thank you very much for your consideration of this important matter. We look forward to your response and to working with you to address this issue in a manner that is both environmentally and economically sound.

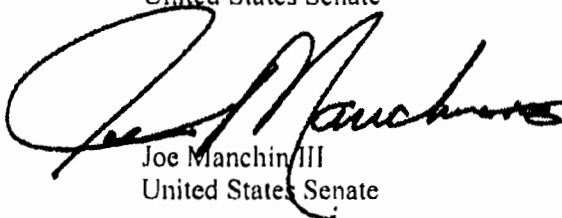
Sincerely,



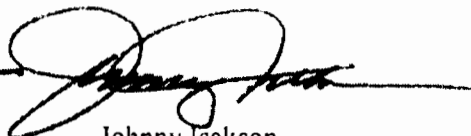
Kent Conrad  
United States Senate



Michael B. Enzi  
United States Senate



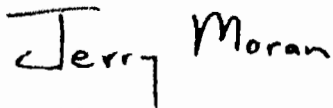
Joe Manchin III  
United States Senate



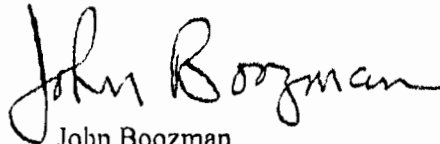
Johnny Isakson  
United States Senate



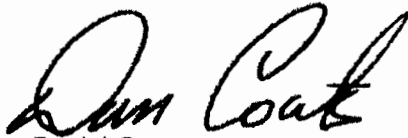
The Honorable Barack Obama  
May 26, 2011  
Page 3



Jerry Moran  
United States Senate



John Boozman  
United States Senate



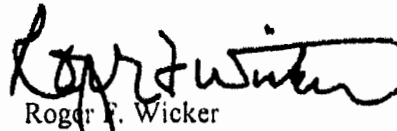
Daniel Coats  
United States Senate



Roy Blunt  
United States Senate



John Hoeven  
United States Senate



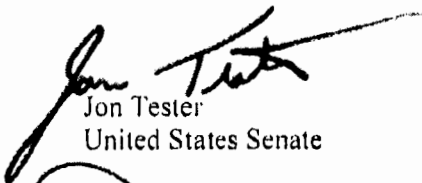
Roger F. Wicker  
United States Senate



Thad Cochran  
United States Senate



Claire McCaskill  
United States Senate



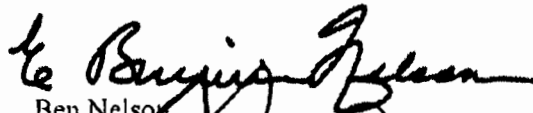
Jon Tester  
United States Senate



Lisa Murkowski  
United States Senate



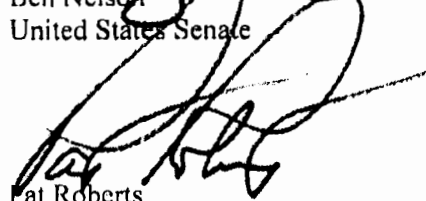
Orrin G. Hatch  
United States Senate



Ben Nelson  
United States Senate





John Barrasso  
United States Senate



Pat Roberts  
United States Senate





  
John Thune  
United States Senate

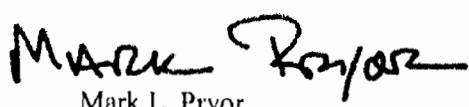
  
David Vitter  
United States Senate

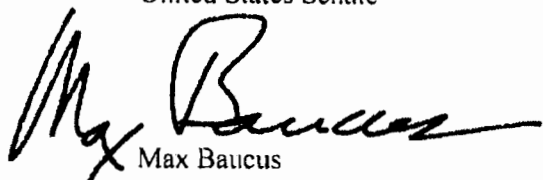
  
Mary L. Landrieu  
United States Senate

  
Mark R. Warner  
United States Senate

  
Bob Corker  
United States Senate

  
Mike Lee  
United States Senate

  
Mark L. Pryor  
United States Senate

  
Max Baucus  
United States Senate

  
Richard Burr  
United States Senate

  
Richard G. Lugar  
United States Senate

  
Lindsey Graham  
United States Senate


  
Rob Portman  
United States Senate

  
Jim DeMint  
United States Senate

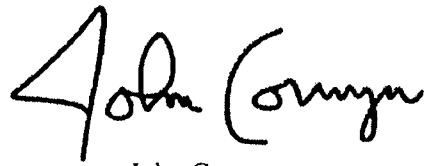
  
Richard C. Shelby  
United States Senate




The Honorable Barack Obama  
May 26, 2011  
Page 5




Patrick J. Toomey  
United States Senate



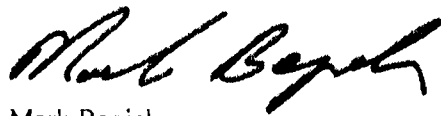
John Cornyn  
United States Senate



Dean Heller  
United States Senate



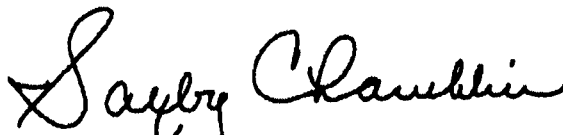
Lamar Alexander  
United States Senate



Mark Begich  
United States Senate



Chuck Grassley  
United States Senate



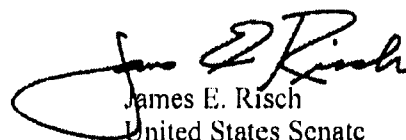
Saxby Chambliss  
United States Senate




Mark Kirk  
United States Senate



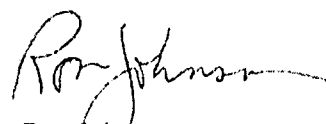
Herb Kohl  
United States Senate



James E. Risch  
United States Senate



John D. Rockefeller IV  
United States Senate



Ron Johnson  
United States Senate





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 18 2011

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of May 26, 2011, to President Barack Obama in which you asked that the U.S. Environmental Protection Agency (EPA) finalize a rule regulating coal combustion residuals (CCR) under Subtitle D of the Resource Conservation and Recovery Act (RCRA) as soon as possible. I appreciate your comments regarding the CCR rule that the EPA proposed on June 21, 2010.

As you note in your letter, the regulation of CCR intended for disposal is appropriate, and the agency agrees with you that operators should meet appropriate standards, or be held accountable. The agency also shares your belief that the beneficial use of CCR, if conducted in a safe and environmentally protective manner, has many environmental advantages and should be encouraged.

Under the proposal, the EPA would regulate the disposal of CCR for the first time. As you know, the proposal sought public comment on two different approaches under RCRA. One option would treat such wastes as a "special waste" under Subtitle C of the statute, which creates a comprehensive program of federally enforceable requirements for waste management and disposal. The second option, as you indicated in your letter, would be to establish standards for waste management and disposal under the authority of Subtitle D of RCRA. The agency is currently reviewing and evaluating the approximately 450,000 public comments received on the proposal, many of which addressed the specific issues raised in your letter, before deciding on the approach to take in the final rule based on the best available science. The agency will issue a final regulation as expeditiously as possible.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Carolyn Levine, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, reading "Mathy Stanislaus", is positioned above the typed name.

Mathy Stanislaus  
Assistant Administrator



**Congress of the United States**  
**Washington, DC 20515**

July 20, 2012

The Honorable Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1201 Pennsylvania Avenue NW  
Washington, D.C. 20460

RE: Addition of New Category 5P to Wisconsin's Impaired Waters List

Dear Administrator Jackson:

The members of the Wisconsin State Cranberry Growers Association (WSCGA) have alerted us to concerns regarding the proposed addition of a new category of impaired waters designated under Section 303(d) of the federal Clean Water Act (CWA) on Wisconsin's "Impaired Waters List."

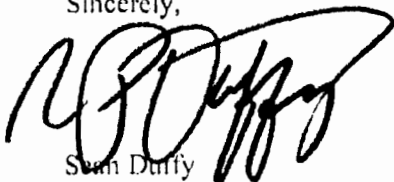
It is our understanding that the Wisconsin Department of Natural Resources (WDNR) published and publicly noticed its newest Impaired Waters List for 2012 in December of 2011. However, in April of 2012, in response to comments from the U.S. Environmental Protection Agency (EPA) and other public comments, the WDNR published a changed list and re-opened the public comment period for review of those changes through May 18, 2012.

The most significant change for Wisconsin farmers was the proposed creation of a new category of impaired waters called category "5P." This new category consists of 99 additional waters that exceed the state's water quality limitations for Phosphorus.

We are concerned about the creation of this new category in Wisconsin for several reasons. First, we believe that existing 303d "watch list" categories are already sufficient to address additional concerns regarding waters in Wisconsin. Second, we are concerned that the EPA is disregarding the Wisconsin DNR's recommendations regarding Impaired Waters. We urge you to let Wisconsin, as the delegated authority under the Clean Water Act, take the lead in this matter.

If we can be of any assistance in this matter, please do not hesitate to contact us.

Sincerely,



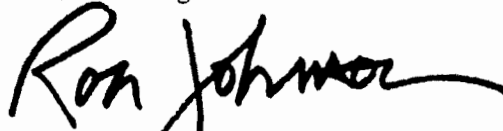
Sam Duffy  
Member of Congress



Reid Ribble  
Member of Congress



Tom Petri  
Member of Congress



Ron Johnson  
United States Senator

cc. Susan Hedman, Regional Administrator; U.S. Environmental Protection Agency, Region 5  
Tinka Hyde, Director, Water Division; U.S. Environmental Protection Agency, Region 5





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**  
**77 WEST JACKSON BOULEVARD**  
**CHICAGO, IL 60604-3590**

**AUG 16 2012**

REPLY TO THE ATTENTION OF:

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your July 20, 2012 letter conveying the Wisconsin State Cranberry Growers Association's concerns about the Wisconsin Department of Natural Resources' proposed listing of certain Wisconsin waters under a newly-designated category of impaired waters, which applies to waters that do not meet state phosphorus standards.

EPA staff have reviewed the Cranberry Growers' written comments on this matter and they had a conference call with the Association on August 2, 2012. I understand that a second call is being scheduled to continue these discussions.

Again, thank you for your letter. If you have further questions, please call me or your staff may contact Ronna Beckmann or Denise Gawlinski, the Region 5 Congressional Liaisons, at 312-886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Hedman".

Susan Hedman  
Regional Administrator



AL-14-000-0948

RON JOHNSON  
WISCONSIN

## United States Senate

WASHINGTON, DC 20510

COMMITTEES:  
BUDGET

COMMERCE, SCIENCE  
AND TRANSPORTATION

FOREIGN RELATIONS

HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

SMALL BUSINESS AND  
ENTREPRENEURSHIP

October 28, 2013

David McIntosh  
Associate Administrator for Congressional and Intergovernmental Relations  
EPA  
1200 Pennsylvania Ave. NW Rm. 3426 ARN  
Washington, DC 20460-0002

Dear David,

Our office has been contacted by constituent *exempt b*. Could your office respond to the constituent's letter (text below)? In essence I think *exempt b* is looking for a written statement from the EPA as to why the investigations were closed. *exempt b* contact information follows as well. Please also copy our office on your reply. Thank you for your help.

From: *exempt b* Date: Thu, Sep 19, 2013 at 3:22 PM Subject: This is our DRINKING WATER..... CALL CALL CALL CALL To: *exempt b*

*exempt b* "Become a Member The EPA Shut Down Three Separate Investigations of Fracking Contamination Tell the EPA that this is unacceptable. Take Action to Protect Your Drinking Water From Fracking *exempt b* and *exempt b* with Dimock tap water. Tell the EPA to protect our health, not the oil and gas industry Dear *exempt b* In recent weeks, EPA whistle-blowers have exposed how the EPA has repeatedly shut down its own fracking-related water contamination investigations after being pressured by the oil and gas industry. This is unbelievable, and totally unacceptable. Tell President Obama and the EPA to reopen these cases immediately. We know the risk that fracking poses to our drinking water, and so does the EPA. That's why they opened these cases to investigate drinking water contamination in the first place. 1. Parker County, TX – The EPA began an investigation after a homeowner reported that his drinking water was bubbling like champagne. But after fracking company Range Resources threatened not to participate in another study in March 2012, the EPA set aside the "smoking gun" report connecting methane migration to fracking.' 2. Dimock, PA – The mid-Atlantic EPA began testing water in Dimock, PA after residents complained that their drinking water was contaminated from nearby fracking operations. But the federal EPA closed the investigation in July 2012 even after the staff members who had been testing the water warned of methane, manganese and arsenic contamination.' 3. Pavilion, WY – The EPA released a draft report in 2011 linking fracking to contamination of an underground aquifer. After drawing criticism from the oil and gas industry, the EPA handed the investigation over to the state of Wyoming in June 2013 to be completed with funding from EnCana, the drilling company charged with contaminating the water wells in the first place.' 3 But the EPA abandoned citizens when they needed them most. This is no coincidence. Tell President Obama and the new EPA administrator, Gina McCarthy, to

WASHINGTON OFFICE:  
328 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5323

OSHKOSH OFFICE:  
219 EAST WASHINGTON AVENUE, SUITE 100  
OSHKOSH, WI 54901  
(920) 230-7250

MILWAUKEE OFFICE:  
517 EAST WISCONSIN AVENUE  
ROOM 408  
MILWAUKEE, WI 53202  
(414) 276-7282



*immediately reopen these investigations and deliver safe drinking water to the residents of these communities while the investigations commence. We're up against a powerful industry, but Americans know how dangerous fracking is — and they're fighting back. Last month, along with our partners we delivered over 600,000 petitions to President Obama to ban fracking on federal lands. In the last two weeks, Los Angeles city council members introduced a fracking moratorium and Highland Park, New Jersey became the first town in the state to ban fracking. We're building a broad, powerful movement to fight back...and win. Speak out for safe water.*

*exempt b*  
Sincerely,

*exempt b*  
*exempt b*  
United States Senator Ron Johnson (WI)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 12 2014

OFFICE OF  
RESEARCH AND DEVELOPMENT

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of October 28, 2013, with questions from your constituent. *exempt b*  
*exempt b* We appreciate *exempt b* interest and concern regarding the potential impacts of hydraulic fracturing on drinking water resources.

Responsible development of America's shale gas resources offers important economic, energy security, and environmental benefits. The EPA is working with states and other stakeholders to understand and address potential concerns with hydraulic fracturing so the public has confidence that natural gas production will proceed in a safe and responsible manner.

The EPA continues to make progress on our research of the potential impacts of hydraulic fracturing on drinking water resources. The agency has conducted extensive outreach to the public, the scientific community and other interested stakeholders to ensure that the draft report reflects current practices in hydraulic fracturing. The study will provide new information and help to answer questions for decision makers at the local, state, tribal and federal levels as they relate to the potential impacts of hydraulic fracturing activities on drinking water resources.

Again, thank you for your letter. Should you have further questions, please contact me or your staff may contact Pamela Janifer in the EPA's Office of Congressional and Intergovernmental Relations at janifer.pamela@epa.gov or (202) 564-6969.

Sincerely,

A handwritten signature in black ink, appearing to read "Lek Kadeli", is written over the word "Sincerely,".

Lek Kadeli

Acting Assistant Administrator



# United States Senate

WASHINGTON, DC 20510

June 30, 2011

The Honorable Lisa P. Jackson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

The Honorable Jo-Ellen Darcy  
Office of the Assistant Secretary (Civil Works)  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310

Dear Administrator Jackson and Assistant Secretary Darcy:

On May 2, 2011 the Environmental Protection Agency and the Army Corps of Engineers (the Agencies) published in the Federal Register (76 Fed. Reg. 24479) a request for comments on draft guidance relating to the identification of waters protected under the Clean Water Act (CWA).

We have a great deal of concern about the actions that the Agencies are pursuing. The Agencies claim that this guidance document is simply meant to clarify how the Agencies understand the existing requirements of the CWA in light of the current law, regulations, and Supreme Court cases. More than clarifying, they greatly expand what could be considered jurisdictional waters through a slew of new and expanded definitions and through changes to applications of jurisdictional tests. This guidance document improperly interprets the opinions of the plurality and Justice Kennedy's opinion in *Rapanos v. United States* by incorporating only their expansive language in an attempt to gain jurisdictional authority over new waters, while ignoring both justices' clear limitations on federal CWA authority.<sup>1</sup> Attached are highlights of several specific issues regarding the draft guidance document.

The decision to change guidance, just a few short years after the Agencies issued official guidance on the exact same issue, has not been prompted by any intervening changes to the underlying statute through legislation or a new Supreme Court decision. Further, we understand that the Agencies intend this draft guidance to be the first step toward a formal rulemaking in the future. Because the Agencies' intent is to turn the draft interim guidance into regulations, it can only be interpreted to mean that they intend the guidance to be followed. Following the guidance will change the rights and responsibilities of individuals under the CWA – this is clearly the regulatory intent.

In the economic analysis completed by the Agencies, it was determined that as few as 2% or as many as 17% percent of non-jurisdictional determinations under current 2003 and 2008 guidance would be considered jurisdictional using the expanded tests under the draft guidance.<sup>2</sup> Any change in jurisdiction which results in a change to the rights and responsibilities of a land owner is, in fact, a change in the law as the program has been implemented to date.

Further, the draft guidance is intended to apply to more jurisdictional interpretations than just those covered by the Army Corps in making §404 determinations, but also those under §402 that governs

<sup>1</sup> 547 U.S. 715 (2006)

<sup>2</sup> "Potential Indirect Economic Impacts and Benefits Associated with Guidance Clarifying the Scope of Clean Water Act Jurisdiction." April 27, 2011 [http://water.epa.gov/lawsregs/guidance/wetlands/upload/cwa\\_guidance\\_impacts\\_benefits.pdf](http://water.epa.gov/lawsregs/guidance/wetlands/upload/cwa_guidance_impacts_benefits.pdf)



National Pollution Discharge Elimination System permits, §311, oil spills and SPCC plans, §303, water quality standards and TMDLs and §401 state water quality certifications. Because most states have delegated authority under many of these sections, this change in guidance will also result in a change in the responsibilities of states in executing their duties under the CWA. While we question seriously the need for this new guidance and believe that the Agencies lack the authority to rewrite their jurisdictional limitations in this manner, one thing is clear: it is fundamentally unfair to the States and the regulated community (including our nation's farmers and other property owners) to subject lands and waters under their control to a change in legal status of this magnitude via a "guidance document." Changes in legal status should only be done, if at all, through the regulatory process, specifically under the Administrative Procedure Act, subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

Because the draft guidance will substantively change how the Agencies decide which waters are subject to federal jurisdiction and will impact the regulated community's rights and obligations under the CWA, this guidance has clear regulatory consequences and goes beyond being simply advisory guidelines. The draft guidance will shift the burden of proving jurisdictional status of waters from the Agencies to the regulated communities, thus making the guidance binding and fundamentally changing the legal rights and responsibilities that they have. When an agency acts to change the rights of an individual, we believe that the agency must go through the formal rulemaking process.

We respectfully request you abandon any further action on this guidance document.

Sincerely,

Sam McClellan

Pat Roberts

Mitch McConnell

Lee Zeldin

Lamar Alexander

Mike Crapo

Paul Cochran

Jeff Sessions

Mike Johanns

Richard B. Lugar

David Vitter

John Barrasso



Robert Winter

Chuck Grassley

Tom Cole

Jimmy Dean

Ron Johnson

Jerry Moran

Rand Paul

Rob Portman

Key Bailey Hutchison

John A. L. ...

Dean Heller

Jon Kyl

John Cornyn

Chris L. Hatch

Mark ...

Joe ...

Pat Romney

Sayby Chaublin

Ken Cook

Joni DeMint

Scott ...

Richard Shelby



John Bozeman

Michael B. Eji

~~\_\_\_\_\_~~

Li E

William J. E

Ray Blend

John Hosen



### Highlights of Concerns

The following are a selection of the concerns we have with the draft guidance.

#### **Interstate waters:**

The Agencies' have added language to their definition of interstate waters explicitly directing field staff to use "other waters" that lie across state boundaries for jurisdictional determinations. "Other waters" include: "intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds." "Other waters" are now elevated to the same level as "navigable waters" for the purposes of determining whether or not waters are jurisdictional. Thus a geographically isolated prairie pothole that happens to be situated on a state boundary would be jurisdictional and could allow for a jurisdictional claim to be made on all other wet areas that have a "significant nexus" to the pothole. This new definition clearly goes beyond the current understanding expands the Agencies reach to previously non-jurisdictional waters.

#### **Significant Nexus:**

The new guidance makes substantial changes to what is considered a "significant nexus." Justice Kennedy's opinion in *Rapanos* stated that wetlands that have a "significant nexus" to traditional navigable waters are "waters of the United States." "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as 'navigable.'" <sup>3</sup> Previous guidance read Justice Kennedy's language to apply to wetlands and limited the significant nexus tributaries to their higher order streams reach.

The new guidance eliminates the reach concept and applies the significant nexus test to all tributaries, wetlands, and proximate other waters that are "in the same watershed." Currently "other waters" are determined to be jurisdictional based on conditions that show their connections to interstate commerce. Additionally, waters may be aggregated and considered together, and if the category of water or wetland is determined to have a significant nexus to downstream waters, then each water or wetland in that category is considered a jurisdictional water of the United States.

The draft interim guidance dictates that determining what tributaries, wetlands, and other waters will have a "significant nexus" includes an analysis of the functions of waters to determine if they trap sediment, filter pollution, retain flood waters, and provide aquatic habitat. A significant nexus is based on both hydrological and ecological effects. A hydrological effect does not require a hydrological connection. The ability to hold water is considered an effect on downstream waters because that function arguably reduces the chances of downstream flooding. Furthermore effects on the chemical integrity of a water body on downstream waters could be reason for asserting jurisdiction, because it could show the ability to reduce the amount of pollutants that would otherwise enter a traditionally navigable water or interstate water. Biological effects include the capacity to transfer nutrients to downstream food webs or providing habitat for species that live part of their lives in downstream waters. Under this interpretation, an isolated water body can be considered to have a significant nexus to downstream waters. Again, if the category of water or wetland is determined to have a significant nexus to downstream waters, then each similarly situated water or wetland is considered jurisdictional.

"Significant nexus" is defined as any relationship that is "more than speculative or insubstantial." This is not the same as requiring a nexus actually be significant. Again, because of the expansive nature of what can be included under the "significant nexus," the draft interim guidance is likely to encompass far more waters than have been previously included. The increased scope not only of "significant nexus," but of

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<sup>3</sup> 547 U.S. 715, 780 (2006)



what waters may be tested using this test, will likely allow the Agencies to assert jurisdiction far beyond current practice.

**Tributaries and Ditches:**

Like interstate waters, tributaries are considered jurisdictional under the Agencies' regulations, but do not have the extensive new definition given in this guidance. A tributary now has the physical definition of the presence of a channel with a bed and an ordinary high water mark. Additionally ditches, which were generally excluded under the current guidance, have been included as tidal ditches or non-tidal ditches newly defined as meeting one of the following: (1) the ditch is an altered natural stream, (2) the ditch was excavated in a water or wetland, (3) the ditch has relatively permanent flowing or standing water, (4) the ditch connects two or more jurisdictional waters, or (5) the ditch drains natural water bodies, such as a wetland, into a tributary system of a navigable or interstate water. The new standards for asserting jurisdiction over ditches utilize both the plurality opinion and the Kennedy significant nexus test. As the draft interim guidance asserts, many previously non-jurisdictional ditches will likely be deemed jurisdictional.

The plurality opinion was clear that the Agencies' assertion of jurisdiction over ditches and ephemeral waters was incorrect. However, the draft interim guidance document allows the Agencies to use the plurality standard as a basis for asserting jurisdiction over ditches. Furthermore, the use of the Kennedy standard for asserting jurisdiction over tributaries ignores the fact that Kennedy was skeptical about the Agencies use of an ordinary high water mark as a presumption for asserting jurisdiction. While more detailed than previous guidance, the effect is the same: nearly everything that connects to a navigable water is jurisdictional. Both the plurality opinion and Kennedy rejected this assertion in *Rapanos*.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 30 2011

OFFICE OF WATER

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of June 30, 2011, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson and Assistant Secretary of the Army for Civil Works (Army) Jo-Ellen Darcy regarding draft guidance clarifying the definition of "waters of the United States (WUS)." I understand your interest in the significant issues associated with the geographic scope of the Clean Water Act (CWA), which are so central to the Agency's mission of assuring effective protection for human health and water quality for all Americans. As the senior manager for the EPA's national water program, I appreciate the opportunity to respond to your letter.

Recognizing the importance of clean water and healthy watersheds to our economy, environment, and communities, on April 27, 2011, the EPA and the U.S. Army Corps of Engineers (Corps) released draft guidance that would update existing policies on where the CWA applies. I want to emphasize that this guidance was issued in draft and is not in effect. The agencies published the draft guidance in the *Federal Register* on May 2, 2011, and extended the public comment period until July 31, 2011. The guidance will not be made final until the EPA and the Corps review these comments and make any revisions to the guidance after careful consideration of all public input.

It is also important to clarify that the draft guidance would not change existing requirements of the law nor increase the geographic scope of waters currently authorized under the law and interpreted by the Courts. The extent of waters covered by the Act remains significantly less than the scope protected under the law prior to Supreme Court decisions in *SWANCC* and *Rapanos*, and the agencies' guidance cannot change that. We believe that guidance will be helpful in providing needed improvements in the consistency, predictability, and clarity of procedures for conducting jurisdictional determinations, without changing current regulatory or statutory requirements, and consistent with the relevant decisions of the Supreme Court.

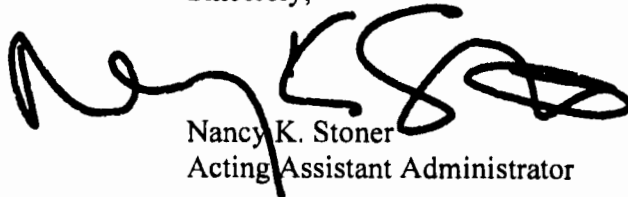
I share your interest in proceeding with an Administrative Procedure Act rulemaking as soon as possible to modify the agencies' regulatory definition of the term "waters of the United States" to reflect the Supreme Court decisions in *SWANCC* and *Rapanos*. Rulemaking assures an additional opportunity for the states, the public, and stakeholders to provide comments on the scope and meaning of this key regulatory term.



Clean water provides critical health, economic, and livability benefits to American communities. Since 1972, the CWA has kept billions of pounds of pollution out of American waters, and has doubled the number of waters that meet safety standards for swimming and fishing. Despite the dramatic progress in restoring the health of the Nation's waters, an estimated one-third of American waters still do not meet the swimmable and fishable goals of the CWA. Additionally, new pollution and development challenges threaten to erode our gains, and demand innovative and strong action in partnership with Federal agencies, states, and the public to ensure clean and healthy water for American families, businesses, and communities. The EPA and the Corps look forward to working with the public, our federal and state partners, and Congress to protect public health and water quality, and promote the nation's economic security.

I appreciate the opportunity to respond to your letter. I hope you will feel free to contact me if you have additional questions or concerns, or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a large, stylized flourish at the end.

Nancy K. Stoner  
Acting Assistant Administrator



AL-12-000-8654

**Congress of the United States**  
**Washington, DC 20515**

May 16, 2012

The Honorable Lisa P. Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson,

We are writing to you concerning the Environmental Protection Agency's (EPA) May 31, 2012, decision regarding the proposed Ozone Nonattainment Designation for Kenosha County, Wisconsin, and the concerns and recommendations that Kenosha County, its local communities, and the State of Wisconsin share regarding this issue.

Administrator Jackson, as you may be aware, Kenosha County and its communities have worked diligently to address the EPA's environmental concerns, even while facing economic challenges. However, based on Kenosha County's proximity to the greater Chicago area, the County and its communities believe that they continue to be penalized, despite their efforts.

Please find enclosed copies of documents shared with our office by the County, its communities, and the State, which outline Kenosha County and the State of Wisconsin's concerns that including Kenosha County in the Chicago Combined Statistical Area (CSA) will achieve little in the goal of reducing the overall ozone pollutant levels in the CSA. It is important to note that both the State and Kenosha County have also expressed concerns over this point because Kenosha County is in comparison a nominal contributor of ozone pollutants in the Chicago CSA, and as such, they possess little to no ability to have an impact in the EPA's goal to reduce overall ozone pollutants within the CSA. While Kenosha County may have greater burdens placed upon them due to a nonattainment designation, they possess almost no ability to create a situation where they will be designated as being "in" attainment in the future, because the data and measurements from the greater Chicago area will continue to be measured negatively against them.

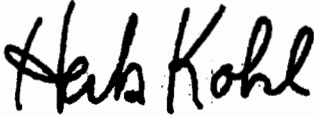
With this being said, we ask that when reviewing this proposed designation that you give your full and fair consideration to the County and State's recommendations regarding an attainment designation, or in the alternative, a partial non-attainment designation, as well as possible solutions going forward related to future monitoring options – in a manner consistent with all laws, rules and regulations.



**Congress of the United States**  
**Washington, DC 20515**

Should you have any questions or require additional information, you are welcome to contact Nathan Schacht of Congressman Ryan's staff at 262-654-1901, or via e-mail at: [Nate.Schacht@mail.house.gov](mailto:Nate.Schacht@mail.house.gov). You can direct your final response (to be shared with all the parties signed onto this letter) to Congressman Ryan's Kenosha Constituent Services Center, 5455 Sheridan Road, Suite 125, Kenosha, Wisconsin, 53545.

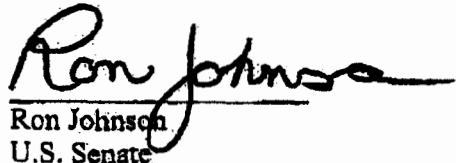
Sincerely,



Herb Kohl  
U.S. Senate



Paul Ryan  
House of Representatives



Ron Johnson  
U.S. Senate

cc: Gina McCarthy, Assistant Administrator, EPA Air and Radiation  
Susan Hedman, Director, EPA Region 5  
John Mooney, EPA Region 5

Enclosures





# COUNTY OF KENOSHA

# COUNTY EXECUTIVE

Jim Kreuser, County Executive

1010 - 56<sup>th</sup> Street, Third Floor  
Kenosha, Wisconsin 53140  
(262) 653-2600  
Fax: (262) 653-2817

April 23, 2012

John Mooney  
U.S. EPA REGION 5  
77 West Jackson Boulevard  
Mail Code: AR-18J  
Chicago, IL 60604-3507

RE: Proposed Ozone Nonattainment Designation for Kenosha County, Wisconsin

Dear Mr. Mooney:

On behalf of Kenosha County, the City of Kenosha, and the Village of Pleasant Prairie (the "Communities"), thank you for taking the time on April 19 to discuss EPA's proposed ozone nonattainment designation for Kenosha County. It was clear that EPA recognizes both the importance and the complexity of this issue for the Communities, and we believe it was a productive discussion. The purpose of this letter is to (1) confirm the joint position of the Communities on EPA's proposed designation, (2) provide additional information to support a possible partial-county nonattainment designation, and (3) present a potential path forward for monitoring future ozone levels in Kenosha County.

First, the Communities continue to believe that, based on the arguments presented in its previous comments, EPA should designate Kenosha County as "attainment." To summarize: the most recent certified data do not show an exceedance at the Chiwaukee Prairie monitor, Kenosha County sources have little if any impact on ozone levels in the Chicago area, and jurisdictional boundaries do not support inclusion of Kenosha County in the Chicago CSA.

However, if EPA determines that available data indicate a health risk near the Chiwaukee Prairie monitor, the Communities support a partial-county nonattainment designation as a preferred alternative. Specifically, past data from a monitor located at 7944 Sheridan Road support designating the portion of Kenosha County east of Sheridan Road as nonattainment, while the balance of Kenosha County would be designated attainment (the "Sheridan Road Option"). The past data (as provided by WDNR) are attached to this letter as Exhibit A. Those data show that, for the five-year period from 1999 through 2003, the Sheridan Road monitor had ozone design values that averaged 5.8 ppb lower than the Chiwaukee Prairie monitor (with individual yearly differentials ranging from 8 to 4 ppb lower). Given that the Chiwaukee Prairie monitor is projected to have a design value of 77 ppb, the historically lower values at the Sheridan Road monitor indicate that ozone levels in areas west of Sheridan Road would be below the attainment threshold of 75 ppb. The Communities have discussed the Sheridan Road Option with WDNR and understand that WDNR will be providing technical support for this option to EPA.



John Mooney  
April 23, 2012  
Page Two

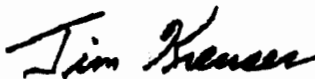
In the event that EPA considers a partial-county attainment option other than the Sheridan Road Option (i.e., EPA considers nonattainment designations for areas *west* of Sheridan Road), the Communities request that EPA notify WDNR and the Communities of the proposed alternative before finalizing the ozone designations.

In addition, the Communities would support WDNR's installation of a new monitor at the University of Wisconsin-Parkside (where a monitor was located in the past) or some other location west of Sheridan Road, while maintaining the current Chiwaukee Prairie monitor. The Communities recognize the value of the data from the Chiwaukee Prairie monitor, which historically has been used to show the contribution of Illinois sources to pollution levels in Kenosha County and to drive emissions reductions in Illinois. This new monitor would help provide a more representative sample of air pollution levels in Kenosha County, allowing EPA, WDNR, and the Communities to make more informed decisions on appropriate pollution controls.

Thank you for your consideration.

Very truly yours,

KENOSHA COUNTY



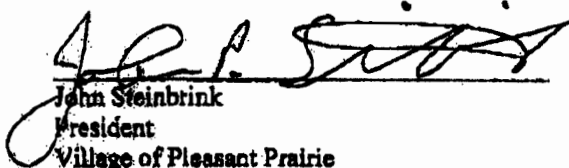
Jim Kreuser  
County Executive



Keith Bosman  
Mayor  
City of Kenosha



Todd Battle, President  
Kenosha Area Business Alliance



John Steinbrink  
President  
Village of Pleasant Prairie





**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

April 24, 2012

Dr. Susan Hedman  
U.S. Environmental Protection Agency (EPA) - Region 5  
77 West Jackson Boulevard  
Mail Code: R-19J  
Chicago IL 60604

Dear Dr. Hedman:

Thank you for the opportunity to provide comments on the U.S. EPA's recently proposed air quality designations for the 2008 ozone National Ambient Air Quality Standards (NAAQS). These comments are in response to your letter dated January 31, 2012.

We agree with comments submitted by Kenosha County, the City of Kenosha, the Village of Pleasant Prairie, and the Kenosha Area Business Alliance (KABA) to the U.S. EPA on March 14<sup>th</sup> and 15<sup>th</sup>, 2012. Kenosha County should be designated attainment based on the U.S. EPA's default data period for ozone designations (2008 – 2010). During this time, Kenosha County met the ozone standard with a design value of 74 parts per billion (ppb). The U.S. EPA's own analysis shows that Kenosha County only contributes 1.72 percent and 1.89 percent of the total nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, respectively, in the proposed nonattainment area. Furthermore, the U.S. EPA acknowledges that Kenosha County emissions are "probably downwind of the violating Zion, Illinois monitor on high ozone days" and that these conclusions "support the exclusion of Kenosha County from the intended ozone nonattainment area." The only reason given by the U.S. EPA for including Kenosha County as nonattainment is because it has "historically been the high downwind ozone monitoring site for the Chicago region." Given the potential economic burdens associated with nonattainment, Kenosha County should not be designated nonattainment solely for monitoring another state's air quality over which the State of Wisconsin has no control. Consequently, Kenosha County should be designated attainment and the U.S. EPA should consider any regulatory relief that can be given to Kenosha County since the vast majority of its ozone is transported from out of state. Additional arguments to support this position can be found in an April 17, 2012 letter from Secretary Cathy Stepp to Regional Administrator Susan Hedman.

If the U.S. EPA refuses to designate Kenosha County as attainment, we ask the U.S. EPA to designate the smallest feasible area of Kenosha County as nonattainment and that it be included as part of the Chicago-Naperville-Michigan City, IL-IN-WI Combined Statistical Area (CSA). This approach is supported by the fact that the majority of ozone recorded in the county at the Chiwaukee site is from the Chicago metropolitan area and is consistent with U.S. EPA's policy for setting nonattainment area boundaries. Furthermore, the U.S. EPA has frequently described Kenosha County as a "receptor county" rather than a "contributing county".

Historic ozone monitoring data collected on Sheridan Road and Wood Road in Kenosha County demonstrates that average design values at the two locations from 1999 – 2003 were 6.0 % and

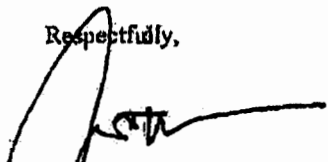


9.3 % lower, respectively, than the Chiwaukee Prairie site. The ozone monitor on Sheridan Road was at the Barbershop Quartet Society site (55-059-0002) located within 3/4 mile of the lake shore. The ozone monitor on Wood Road was at the University of Wisconsin - Parkside site (55-059-0022) located within two miles of the lake shore. These two monitors were discontinued at the end of 2003 due to federal reductions in state funding. Furthermore, the monitor in Racine County (55-101-0017) is one mile from the lake shore and was 5.8 % lower than the Chiwaukee Prairie site from 2003 - 2010. The geographic locations of the Kenosha and Racine ozone monitors, along with ozone data summaries, are shown in figures 1 and 2.

As compared to the 2008 - 2010 ozone design value at Chiwaukee Prairie of 74 ppb, the prior ozone data strongly suggests that ozone levels beyond Sheridan Road would attain the 2008 NAAQS. Given this information, and under the condition that the U.S. EPA does not accept attainment for the entire county, all areas west of Sheridan Road in Kenosha County should be designated as attainment. This approach protects public health and links Kenosha County with the area that is actually contributing to the high ozone concentrations (i.e., the Chicago metropolitan area).

Thank you for consideration of these comments. Please further address technical issues with the Department of Natural Resources by contacting Bart Sponseller, Air Management Bureau Director, at (608) 264 - 8537 or [Bart.Sponseller@wisconsin.gov](mailto:Bart.Sponseller@wisconsin.gov).

Respectfully,



Scott Walker, Governor  
State of Wisconsin

cc: Cathy Stepp, Secretary, WDNR - AD/8  
Matt Moroney, Deputy Secretary, WDNR - AD / 8  
Patrick Stevens, Air and Waste Division Administrator, WDNR - AD / 8  
Bart Sponseller, Air Management Bureau Director, WDNR - AM / 7  
Joseph Hoch, Regional Pollutant and Mobile Source Section Chief - AM / 7

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FIGURE 1

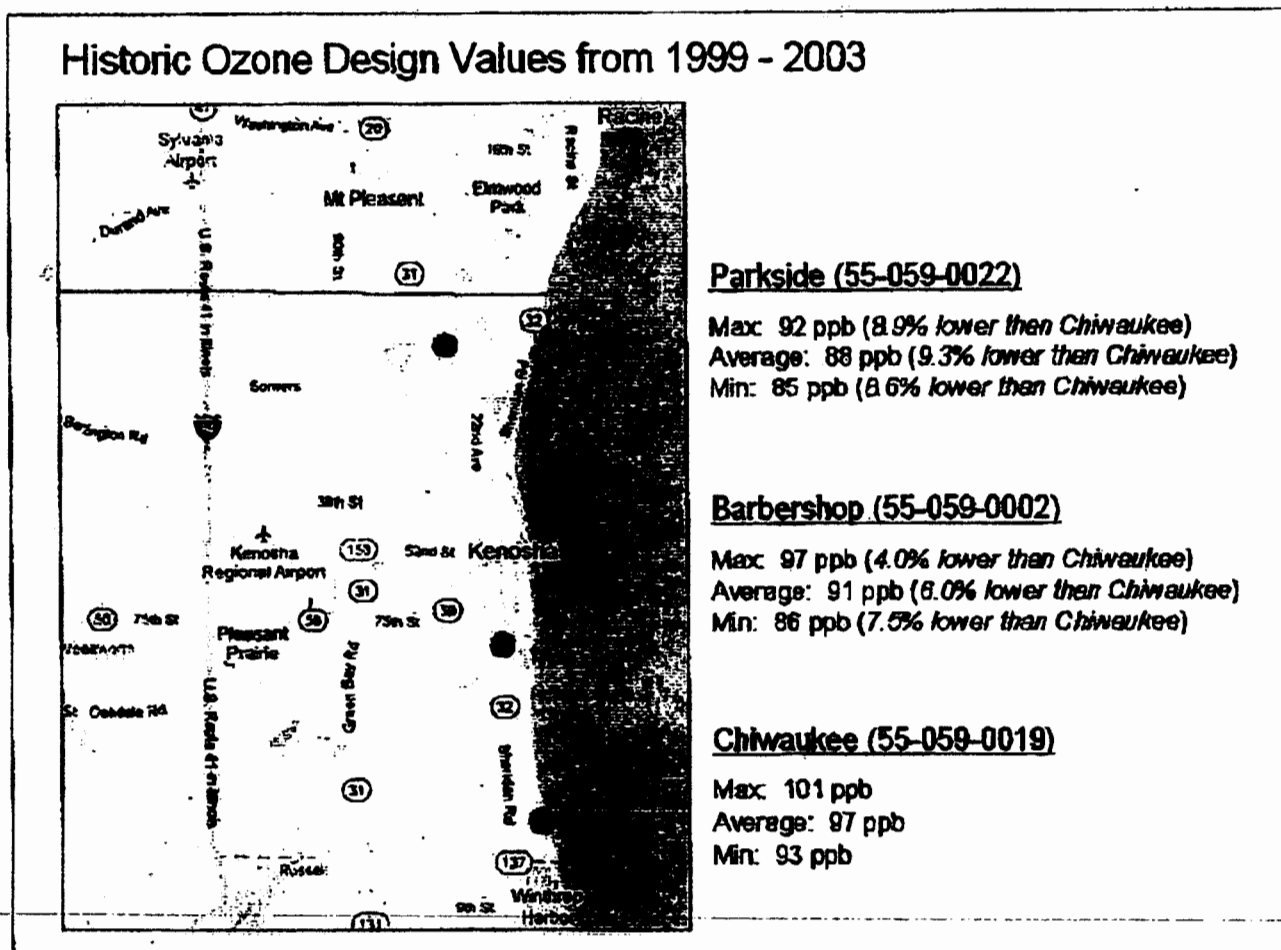
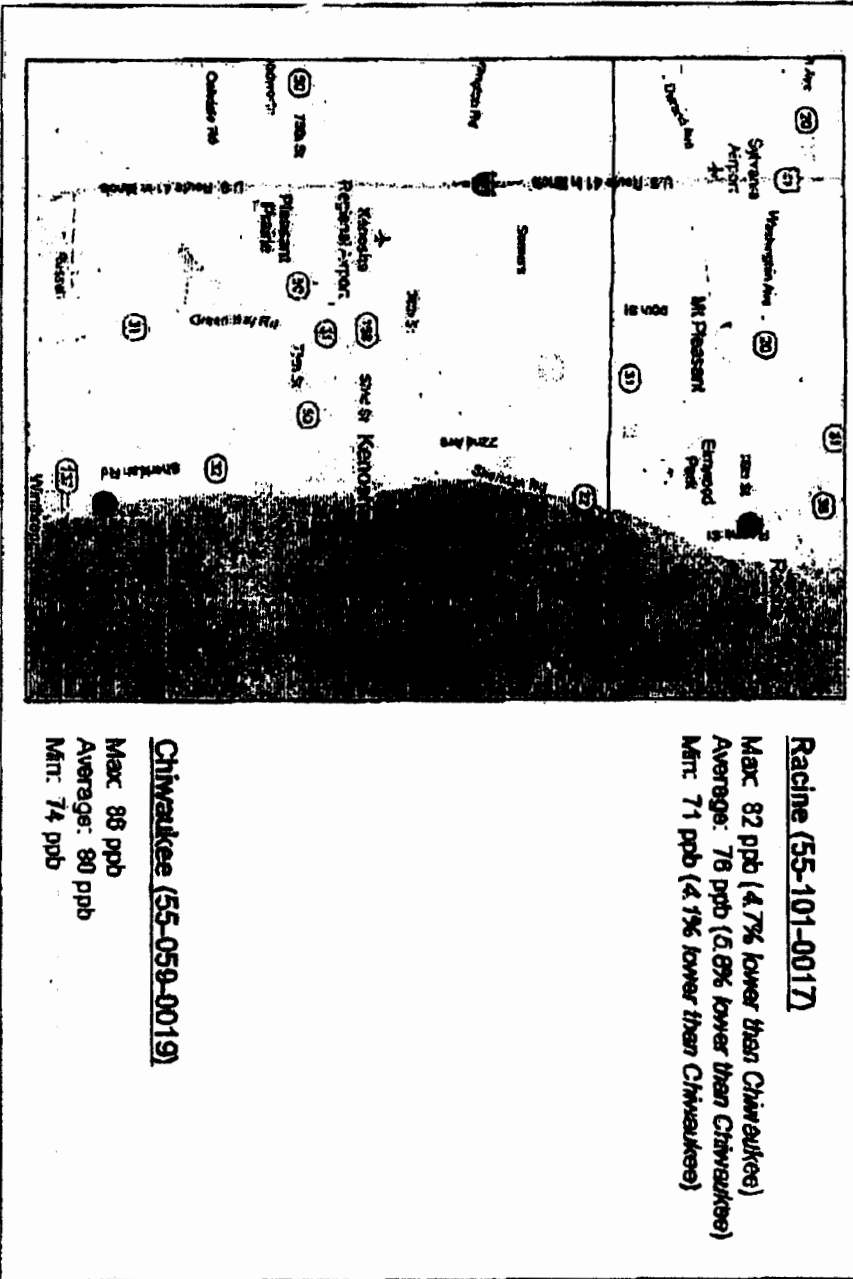




FIGURE 2

# Historic Ozone Design Values from 2003 - 2010



## Racine (55-101-0017)

Max: 82 ppb (4.7% lower than Chippewa)  
 Average: 76 ppb (5.8% lower than Chippewa)  
 Min: 71 ppb (4.1% lower than Chippewa)

## Chippewa (55-059-0019)

Max: 86 ppb  
 Average: 80 ppb  
 Min: 74 ppb



State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
101 S. Webster Street  
Box 7921  
Madison WI 53707-7921

Scott Walker, Governor  
Cathy Stepp, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



April 17, 2012

Susan Hedman  
U.S. Environmental Protection Agency (EPA) - Region 5  
77 West Jackson Boulevard  
Mail Code: R-19J  
Chicago IL 60604

Subject: Re: Wisconsin's 120 Day Letter for Ozone Designations

Dear Regional Administrator Hedman:

Thank you for the opportunity to provide comments on the U.S. EPA's recently proposed air quality designations for the 2008 ozone National Ambient Air Quality Standards (NAAQS). These comments are in response to a letter we received from the U.S. EPA on January 31, 2012.

#### National Consistency

Wisconsin recognizes that Illinois submitted 2011 certified ozone data to the U.S. EPA early and based on 2009 - 2011, the Chicago-Naperville-Michigan City, IL-IN-WI Combined Statistical Area (CSA) violated the ozone NAAQS based on a monitor located in Lake County, IL. Illinois made this decision in order to receive additional Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality Improvement (CMAQ) funds, of which Kenosha County and the remainder of Wisconsin will receive no additional funds. From a simple standpoint of national consistency, the U.S. EPA should not allow individual CSA's to select the 3-year period that suits their individual situation best, as did the State of Illinois. The U.S. EPA should maintain its position of using the default data period for ozone designations (2008 - 2010). Kenosha County met the ozone NAAQS with a design value of 74 parts per billion (ppb) during that period; therefore, Kenosha County should be designated as "unclassifiable / attainment." Additional support for this position is provided below.

#### Emissions

Per analysis presented in the U.S. EPA's own technical support document (TSD) from January 2012, Kenosha County only contributed 1.72 percent and 1.89 percent of the total nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, respectively, in the Chicago CSA in 2008. Moreover, it is likely that Kenosha County's contribution has decreased further since emissions have continued to decline. The following was also noted in the TSD from the U.S. EPA:

*"Kenosha County presents a more unique situation for this designation analysis. The VOC and NO<sub>x</sub> emissions in Kenosha County are relatively low and similar to those for counties recommended for exclusion from the intended ozone nonattainment area. In addition, it is noted that Illinois' and Wisconsin's wind direction analyses for high ozone days indicate that Kenosha County emissions are probably downwind of the violating Zion, Illinois monitor on high ozone days. These conclusions would support the exclusion of Kenosha County (emphasis added) from the intended ozone nonattainment area."*



**Kenosha County should not be designated nonattainment for monitoring another state's air quality over which the State of Wisconsin has no control or authority. In addition, the U.S. EPA entirely ignores the fact that emissions from Kenosha County likely contribute extremely little to the violating monitor in Lake County, IL on high ozone days.**

#### *Population*

The U.S. EPA's January 2012 TSD also recognizes that Kenosha County comprises only 1.7% of the total population of the Chicago CSA and that the county has a "moderately low 2010 population compared to those of higher populated counties in the [Chicago CSA]." When Kenosha County's moderate population density is coupled with its low total population, it strongly indicates that population-related emissions are not likely to significantly contribute to the violating ozone monitor in Lake County, IL or the ozone monitor in Kenosha County, WI.

#### *Traffic and Commuting Patterns*

Traffic and commuting patterns information in the U.S. EPA's TSD further support the fact that Kenosha County should be designated attainment as the vehicle miles traveled (VMT) for Kenosha County is only 1.9% of the total VMT for the entire Chicago CSA.

#### *Deleterious Economic Impacts*

Designation of Kenosha County as nonattainment would place undue economic burden through regulatory requirements, as existing sources have expended significant amounts of money to reduce their emissions over the past decade. In addition, there is a known, negative stigma for economic development associated with a nonattainment designation. Nonattainment would place the future of economic development in Kenosha County at risk. Why place the future of Kenosha County economic development at risk when it is clear that the primary culpability for ozone pollution in Kenosha County rests with the Chicago area?

**Based on the factors discussed and analysis from the U.S. EPA, Kenosha County should be designated as unclassifiable / attainment for the 2008 ozone NAAQS.**

#### *The Chiwaukee Ozone Monitor*

The Department does not believe the Chiwaukee ozone monitor (55-059-0019) located in Kenosha County near the city of Pleasant Prairie should be used for regulatory compliance for Kenosha County. This reiterates a position taken by the Department in a letter sent to Ms. Cheryl Newton on January 18, 2011. A U.S. EPA monitoring guidance document states that "for regulatory compliance, the principle objective is to measure the ozone concentrations in the high population density areas and the maximum downwind concentration from the urban region." The current Chiwaukee ozone monitor is not located in a high population density area of the county and is not downwind of any emission sources located within Kenosha County. Furthermore, as noted above, the U.S. EPA information indicates that less than 2% of NO<sub>x</sub> and VOC ozone precursor emissions in the Chicago CSA come from Kenosha County.

Relocating the Chiwaukee ozone monitor would have little to no impact on the measurement of regional ozone concentrations, namely from the Chicago-Naperville-Michigan City CSA. The ozone concentrations measured at the Chiwaukee ozone monitor are redundant compared to those measured at the State of Illinois' Zion ozone monitor (17-097-1007) located at Illinois Beach State Park. The ozone monitoring sites are separated by a distance of only 215 miles. The redundancy finding is supported by a recent 5-year network assessment by Region 5 states under leadership from the Lake Michigan Air Directors Consortium (LADCO). As part of this network assessment, LADCO used correlation analyses conducted by the U.S. EPA. From 2006 through 2008, these two ozone monitoring sites had a correlation coefficient (r-value) of 0.97 and an average relative percent difference of only 0.070. Recent ozone monitoring data indicates a much higher degree of correlation between the sites than that indicated in the U.S. EPA's TSD, which considers data prior to significant NO<sub>x</sub> control measures



Page 3

in the region. The degree of correlation is the second highest for any other Illinois ozone monitoring site and the highest for any other Wisconsin ozone monitoring site.

The U.S. EPA should provide Wisconsin express permission to relocate the Chiwaukee ozone monitor to an area of the county that more accurately measures ozone that is due, at least in part, to precursor emissions emitted in Kenosha County.

In the event that the U.S. EPA will not allow relocation of the Chiwaukee ozone monitor, data collected from that monitor should be used to determine compliance with the ozone NAAQS for only Illinois counties in the Chicago CSA, and not Wisconsin counties. This is consistent with the original rationale for placing the monitor in Chiwaukee.

In any event, during 2012, Wisconsin intends to identify an appropriate location in Kenosha County for an ozone monitor that will measure ozone concentrations more representative of general population exposure. Wisconsin will note this in its 2013 Monitoring Network Plan. Wisconsin intends to have the ozone monitor fully operational by the beginning of the 2013 ozone monitoring season.

Thank you for consideration of these comments. If you have any questions please feel free to contact Bart Sponseller, Air Management Bureau Director, at (608) 264 - 8537 or [Bart.Sponseller@wisconsin.gov](mailto:Bart.Sponseller@wisconsin.gov).

Respectfully,



*Cathy Stepp*

*for* Cathy Stepp, Secretary  
Wisconsin Department of Natural Resources

cc: . Patrick Stevens, Air and Waste Division Administrator - AD / 8  
Bart Sponseller, Air Management Bureau Director - AM/7  
Joseph Hoch, Regional Pollutant and Mobile Source Section Chief - AM / 7





Office of Congressman  
**PAUL RYAN**



SERVING WISCONSIN'S FIRST CONGRESSIONAL DISTRICT

5455 SHERIDAN ROAD, SUITE 125  
KENOSHA, WI 53140  
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RE:

Proposed Ozone Nonattainment  
Designation for Kenosha County,  
Wisconsin

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If you do not receive all pages, or receive this fax in error, please call (262) 654-1901.

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NOTES/COMMENTS:

Please let me know if you have any questions regarding this request. Thank you.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

**JUN 26 2012**

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your May 16, 2012, letter to Administrator Lisa Jackson, co-signed by two of your colleagues, regarding the designation for Kenosha County, Wisconsin for the 2008 National Ambient Air Quality Standards for Ozone. The Administrator asked that I reply on her behalf.

You asked that the U.S. Environmental Protection Agency consider the county's and state's recommendations regarding an attainment designation, or in the alternative, a partial nonattainment designation for the ozone standard, as well as possible solutions to future monitoring issues.

On May 31, 2012, the EPA completed the designations for the 2008 ozone standards. In accordance with the Clean Air Act, the EPA must designate an area "nonattainment" if it is violating the 2008 ozone standards or if it is contributing to a violation of the 2008 ozone standards in a nearby area. After reviewing the recent certified ozone air quality data for the Chicago metropolitan area and evaluating factors to assess contributions to nearby violations of the ozone standards, the EPA determined that a portion of Kenosha County, Wisconsin contributes to the violation of the 2008 ozone standards in Lake County, Illinois. As a result, the EPA designated that portion of Kenosha County as part of the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) nonattainment area. The EPA designated the remaining portion of Kenosha County as unclassifiable/attainment because that portion does not violate the standards or contribute to a nearby violation of the standards. Wisconsin's recently certified 2011 ozone air quality data were submitted by the state too late for the EPA to use for purposes of the ozone designation itself, however we note that these data show a violation of the 2008 ozone standards at the Chiwaukee Prairie monitor in Kenosha County. The analysis to support the final decisions is provided in the Technical Support Document for the Chicago-Naperville, IL-IN-WI nonattainment area, which is available on the EPA's ozone designations website at <http://www.epa.gov/ozonedesignations>.

In making its final designation decisions, the EPA considered the recommendation from the state of Wisconsin and additional information submitted by the state and the county after the EPA notified Governor Scott Walker, in a letter dated January 31, 2012, of the EPA's intended modification to the state's recommended boundary. Although we did not agree with the partial county boundary that the state and county recommended as part of this material, in light of the information submitted, we re-evaluated whether the entire county should be designated nonattainment. As noted above, we concluded that only a portion of the county contributed to the nearby violation of the 2008 ozone NAAQS and thus only included that portion of the county as part of the designated nonattainment area. The portion of Kenosha County that the EPA has designated as nonattainment for the 2008 ozone standards includes Pleasant Prairie and Somers Townships, an area which is bounded by the northern and southern borders



of Kenosha County, the Lake Michigan shoreline, and the I-94 corridor. This area was selected on the basis that Kenosha County was found to be contributing to the ozone standard violation monitored at Zion, Illinois and Pleasant Prairie and Somers Townships were found to contain a significant portion of Kenosha County's contributing emissions.

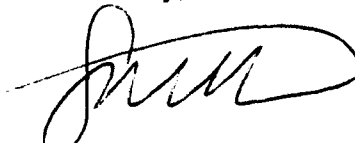
The Chicago-Naperville, IL-IN-WI nonattainment area is classified as a Marginal nonattainment area. In general, the EPA expects Marginal areas will be able to meet the standards within three years, usually as a result of recent and pending federal pollution control measures, and generally without the need for significant additional local emission controls.

Working closely with states and tribes, the EPA is implementing the 2008 ozone standards using a common sense approach that protects air quality, maximizes flexibility and minimizes burdens on state, tribal, and local governments. The EPA recognizes that it shares the responsibility with the states and tribes for managing ozone air pollution.

With regard to the monitoring of ozone in Kenosha County, the EPA previously responded to the State of Wisconsin, in a March 24, 2011, letter, its concerns about relocating the Chiwaukee Prairie ozone monitor, which is a critical monitoring location for determining the maximum ozone impact of the Chicago area. In that letter, the EPA offered to work with the State of Wisconsin to find additional ozone monitoring sites in Kenosha County. A copy of the March 24, 2011, letter is enclosed.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a large, sweeping loop at the end.

Gina McCarthy  
Assistant Administrator

Enclosure



# United States Senate

WASHINGTON, DC 20510

April 18, 2011

Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson:

Thank you for appearing before the Senate Interior Appropriations Subcommittee on March 16<sup>th</sup>. We are writing to follow up with you about the final Boiler MACT rules and to ascertain your agency's intention to accept further public comment through the reconsideration process.

We are particularly concerned about the negative potential impact EPA's final Boiler MACT rules will have on U.S. manufacturers. Businesses affected by the Boiler MACT regulations are diligently working to understand the multifaceted impact of the rules. Due to the complex nature of the rule, however, it is taking longer than anticipated to fully determine the impact.

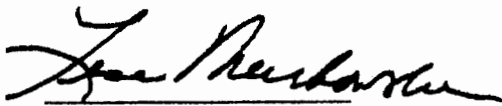
Although EPA has made progress since the draft rule was issued last year, we are troubled that initial industry estimates indicate that EPA's final Boiler MACT rules could still lead to thousands of additional job losses. We find very little reassurance in EPA's claim that the cost of the final rule has been lowered by 50 percent, because lowering the costs of a regulation does not automatically equate to making it affordable for businesses. The estimates included in testimony by the American Forest & Paper Association last month show that the rule could result in more than \$3 billion in capital costs for the forest products industry alone, and well over \$11 billion for all manufacturing.

To ensure that the public, industry, and stakeholders have an opportunity to participate in providing the EPA with constructive comments on the cost of compliance and the real-world achievability of the standard, we ask that you take into consideration the complexity of the rule and at a minimum provide ample opportunity for review and feedback through the administrative process. We look forward to learning how the rule can be changed under the administrative reconsideration process, and are also eager to learn the dates and duration of the reconsideration period so we may inform our constituents of the timeline.

Recognizing that EPA previously sought a 15-month extension to review the public comments and industry feedback and was only granted a one-month extension by the court, we look forward to working together to ensure that EPA has sufficient time to review the comments and reexamine the rule. As EPA begins the reconsideration process, we urge the agency to carefully consider the public comments and advance a regulation that protects the environment and public health while fostering economic recovery and preserving jobs.



Sincerely,

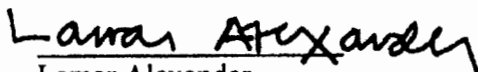


Lisa Murkowski  
U.S. Senator

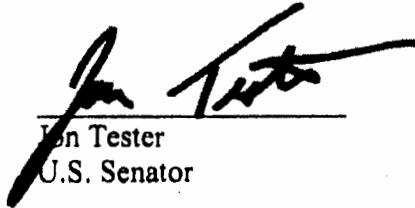


Susan M. Collins  
U.S. Senator

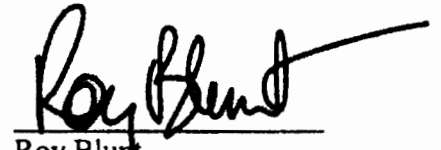
Mary L. Landrieu  
U.S. Senator



Lamar Alexander  
U.S. Senator



Ben Tester  
U.S. Senator



Roy Blunt  
U.S. Senator



Thad Cochran  
U.S. Senator



Ben Nelson  
U.S. Senator

Ron Johnson  
U.S. Senator



Barbara A. Mikulski  
U.S. Senator





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP - 2 2011

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

I am writing in response to your letter of April 18, 2011, co-signed by 9 of your colleagues, regarding the emissions standards the U.S. Environmental Protection Agency (EPA) issued in February to limit hazardous air pollution from industrial, commercial, and institutional boilers and process heaters ("boiler air toxics standards"). I am writing to update you on the agency's work to carry out that Congressional mandate.

The boiler air toxics standards are required by the 1990 Amendments to the Clean Air Act. The EPA proposed boiler air toxics standards for public comment in June 2010, after previously-issued standards were vacated by a federal court. A large number of businesses and other institutions submitted comments on the proposed standards. As a result of the comments and new data that were submitted, the EPA determined that extensive revisions to the proposed standards were appropriate. In December 2010, the EPA requested that the federal District Court for the District of Columbia grant the Agency additional time for review to ensure that the public's input was fully addressed. However, the court granted the EPA only 30 days.

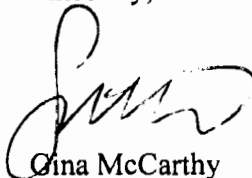
The EPA met this deadline in February 2011 by issuing final standards that maintained maximum public health benefits while cutting the projected cost of implementation dramatically. I am proud of the work that the EPA did to craft protective, sensible standards for controlling hazardous air pollution from boilers and process heaters. The standards reflect what industry had told the agency about the practical reality of operating these units.

When the Agency finalized these standards in February, we announced that we would reconsider certain aspects of the standards. Since then, the agency has provided additional detail about the reconsideration process. First, the EPA announced that we were postponing the effective date of the standards for major source boilers during the pendency of litigation and to allow the Agency to continue to consider additional data and to seek additional public comment as we reconsider these standards. Second, we announced in May that we would accept additional data and information regarding potential reconsideration of these standards until July 15, 2011. Third, we announced that we intend to issue a proposed reconsideration decision by the end of October 2011 and to finalize a decision by the end of April 2012. This schedule will allow the agency to base the final standards on the best available data and provides the public with ample opportunity to provide additional information and input.



I hope that this update has been helpful. If you have any questions, please do not hesitate to contact me or to have your staff contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a stylized, cursive script.

Gina McCarthy  
Assistant Administrator



United States Senate  
WASHINGTON, DC 20510

November 13, 2013

The Honorable Gina McCarthy  
Administrator, U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington DC 20460

Dear Administrator McCarthy:

We are writing to express our views regarding the Environmental Protection Agency's (EPA) upcoming Maximum Achievable Control Technology (MACT) rule for brick and structural clay processes, which is scheduled for proposal by February 6, 2014, and finalization by December 18, 2014.<sup>1</sup> This "Brick MACT," if crafted imprudently, could jeopardize the economic viability of brick manufacturers and distributors in our states and imperil hundreds of thousands of jobs nationwide. We urge you to exercise the discretion provided by Congress in the Clean Air Act (CAA) to minimize regulatory burdens on the brick industry that do not provide commensurate environmental benefit. We urge EPA to fully consider how such measures would affect public health and the economic vitality of brick manufacturers, distributors, and communities that rely on them for their livelihood.

The brick industry is in a unique situation. In 2003, EPA issued a Brick MACT (68 Fed. Reg. 26,689) that the brick industry implemented at a total compliance cost of approximately \$100 million. Controls installed to comply with the 2003 MACT rule largely remain in operation. This 2003 MACT, however, was subsequently vacated by a federal court in 2007 due to no fault of the brick industry. As you can appreciate, it is highly problematic when an industry is subject to two consecutive rounds of technology-based MACT rules, particularly after compliance was attained with the first technology-based MACT. Moreover, we are concerned that the lower emission levels attained from controls installed to comply with the 2003 vacated rule may be used as the baseline for the second MACT and may result in an even more stringent rule than would have been imposed absent the first MACT. This "MACT on MACT" situation could require the costly removal and replacement of still-viable air pollution control devices without producing actual environmental or human health benefits.

On December 7, 2012, EPA published a proposed schedule for a new Brick MACT pursuant to efforts to negotiate a consent decree with the complainant in the case vacating the 2003 Brick MACT. We appreciate that EPA has amended this proposed consent decree to add an additional six months to the schedule for the proposed rule. This newly proposed schedule envisions a final rule issuance late December of 2014. We urge EPA to continue to review the schedule and identify if and when additional changes to the final schedule should be made.

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<sup>1</sup> This letter is being sent in coordination with a bipartisan group comprised of 53 members of the U.S. House of Representatives who wrote you with these same concerns in a letter dated November 6, 2013.



We respectfully request that EPA use this time to take the steps necessary to promulgate a rule that protects public health and the environment, but does not impose unwarranted burdens on the brick industry. We believe such an approach would include the following:

1. **Consideration of Work Practice Standards and Accurate Regulatory Burden Estimates.** We urge EPA to use its authority in the CAA to consider work practice standards, wherever reasonable, including for the relatively small amount of metal HAP emissions, including mercury. This review should include an assessment of whether work practice standards are warranted for all pollutants not covered by a health-based standard. EPA is currently considering very expensive controls for the minimal amounts of mercury that the brick industry emits. The brick industry is on the list for MACT development because of acid gasses, not metal emissions, and to absorb crippling control costs to receive minor reductions in the amount of mercury and metals the industry emits may not be justified or even required to meet the requirements of the Clean Air Act. In addition, since EPA's estimated annual compliance costs are significant (running well over \$150,000,000 per year) and the rule will impact a substantial number of small businesses, thoughtful consideration of the additional reviews required to comply with the Regulatory Flexibility Act (RFA) are critical. EPA must develop a thorough Initial Regulatory Flexibility Analysis that assesses the impacts on small businesses and examines less burdensome alternatives. EPA must also provide accurate estimates of the costs of the rule and a reasonable determination of the technical feasibility of control devices to meet the standard as an essential part of an initial RFA. We believe work practice standards could both protect the environment and eliminate unwarranted burdens.
2. **Health-based standard.** CAA Section 112(d)(4) allows for consideration of health-based thresholds when establishing MACT standards for a category. While this action is discretionary under the CAA, the unique MACT on MACT situation discussed above, as well as the limited quantity of emissions generated by brick manufactures justify full consideration of the health-based approach for standards set pursuant to this rule. If EPA chooses not to pursue a health-based approach to this regulation, we ask that EPA explain fully why this approach is not reasonable for this industry.
3. **Establish reasonable subcategories.** The CAA provides ample authority for EPA to use its discretion to establish subcategories when evaluating MACT for an industry. We urge EPA to use this discretion to minimize unnecessary "MACT on MACT" impacts for this industry, including the removal of viable air pollution control devices installed in good faith to comply with the 2003 MACT. At a minimum, EPA should maintain the same subcategories as in the 2003 rule. However, EPA should fully explore all potential subcategorization options.



Thank you for considering the incorporation of these environmentally-responsible and cost-conscious approaches as EPA develops the proposed Brick MACT rule. A reasonable standard will ensure that human health and the environment are protected and that this essential industry can continue to thrive, generate jobs in our states, and help our struggling economy rebound.

Sincerely,

Jeff Seamon

John Thune

Ron Johnson

Lamar Alexander

John Boozman

Sayby Chaulkline

John Cornyn

Pat Romney

Mike Johanns

Dan Vitter

Sam McCracken

Lyndie Weimer

Rob Portman

Jim Risch

Jim Risch

Roy Blunt

Mike Crapo





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

**JAN 13 2014**

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, DC 20510

Dear Senator Johnson:

Thank you for your letter of November 13, 2013, co-signed by 17 of your colleagues, to U.S. Environmental Protection Agency Administrator Gina McCarthy, regarding standards that the EPA is in the process of developing for the brick industry. The Administrator has asked that I respond on her behalf.

The EPA is required to set national emissions standards for hazardous air pollutants (NESHAP) under section 112(d) of the Clean Air Act (CAA). As you mention in your letter, although the EPA issued a NESHAP for this industry in 2003, the United States Court of Appeals for the District of Columbia Circuit vacated that rule in 2007. We are in the process of developing a new rule in response to the vacatur. The brick and structural clay manufacturing industry remains unregulated under CAA section 112(d) because no federal 112(d) standard is in place. Sources in this industry emit a number of air toxics, including hydrogen fluoride, hydrogen chloride and toxic metals (such as antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead and selenium).

Your letter asks that the EPA consider work practice standards, wherever reasonable, and that we assess the cost impacts that the proposed standards will have on the brick industry. We agree that in some cases work practices may be appropriate, and we are assessing the potential use of work practice standards where it is reasonable and consistent with the requirements of the CAA. The EPA analyzes the costs that may be associated with all proposed rules and will conduct a regulatory impact analysis (RIA) to thoroughly assess the impacts.

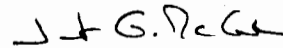
You ask that we consider health-based standards and that we use our discretion to establish subcategories. We are aware of the brick industry's desire that we set health-based standards and we will consider them as we develop the proposed rule. We also agree that subcategorization is an important consideration and we are evaluating all potential subcategories that may be appropriate for the brick industry.



In closing, I would like to underscore that we are sensitive to the impact that this rulemaking may have on the brick industry. As we go forward, we are considering a variety of options based on the diversity of process units, operational characteristics and other factors affecting hazardous air pollutant emissions. I can assure you that we will consider the concerns of the brick industry as we develop the proposed rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at [bailey.kevin@epa.gov](mailto:bailey.kevin@epa.gov) or (202) 564-2998.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. McCabe", written in a cursive style.

Janet G. McCabe  
Acting Assistant Administrator



# United States Senate

WASHINGTON, DC 20510

June 27, 2011

The Honorable Lisa Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson,

We are writing to you today with our concerns regarding the implementation timeline for the Oil Spill Prevention, Control and Countermeasure (SPCC) rule for farmers.

First we would like to thank you for finalizing the exemption of milk and milk product containers from the SPCC rule on April 12, 2011. We appreciate your attentiveness to the feedback you received from the agriculture community. We also appreciate your willingness to prevent the unintended consequences of the SPCC regulations, which would have placed a tremendous burden on the agricultural community.

We are writing to you today with our concerns regarding the implementation timeline for the SPCC rule for farmers. As you know, last year the EPA proposed extending the compliance date under the SPCC rule to November of 2011. We applaud EPA's current extension for farms that came into business after August of 2002. We also appreciate the efforts of EPA and USDA to inform farmers about the new guidelines -- in particular, USDA's new pilot initiative to help producers comply with the new SPCC rule. However, we remain concerned that EPA has not yet undertaken the outreach necessary to ensure that all farms have sufficient opportunity to meet their obligations under the regulation.

SPCC regulations are applicable to any facility, including farms, with an aggregate above-ground oil storage capacity of 1,320 gallons in tanks of 55 gallons or greater. To comply with this rule, farms where there is a risk of spilled oil reaching navigable waters may need to undertake costly engineering services, as well as infrastructure improvements, to assure compliance with the regulation. Despite setting stringent standards, the EPA has done little to make sure small farms can meet the requirements set forth in the SPCC rule.

We strongly believe farmers want to be in compliance with the rule, but in order to do so they will need a longer period during which EPA undertakes a vigorous outreach effort with the agricultural community. Currently, the farming community in many instances lacks access to Professional Engineers (PEs). We have heard from many farmers who cannot find PEs willing or able to work on farms. In some states, no qualified professional engineers have even registered to provide SPCC consultation. In others, fewer than five have registered. Without access to PEs, it will be impossible for farmers to become SPCC compliant.



Recently released draft guidance on waters of the United States by the EPA and the U.S. Army Corps of Engineers also appear to dramatically expand the agencies' authority with regard to which waters and wetlands are considered "adjacent" to jurisdictional "waters of the United States" under the Clean Water Act. Many farm and ranch families are worried that this guidance could now force them to comply with the SPCC rule, with very little time to do so. Additionally, the delay of compliance assistance documentation has put farmers far behind the curve in preparing for compliance. Had the information and documentation been available before the January grower meetings, the compliance process could have begun before the time intensive growing season.

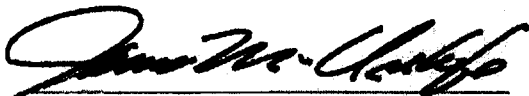
Furthermore, EPA still needs to clarify exactly who is responsible for holding and maintaining the plan, as many farms are operated by people who do not own the land. EPA also needs to clarify how it plans to enforce the rule.

The last thing we want is for confusion or an overly burdensome rule to disincentivize compliance. Many farmers do not keep their tanks full during the entire year, and we have already heard from associations whose members are considering decreasing the size of their tanks so they will not be subject to SPCC compliance. This could eliminate their ability to buy fuel in bulk, thus increasing their costs and the costs of food production.

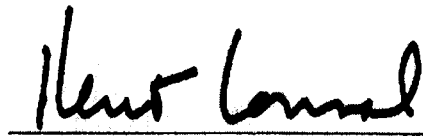
Small family farms have a natural incentive to prevent any possible oil spills on their property. No one wants more oil spills. In fact, the last people who want to spill oil are family farm owners. The impact of dealing with a costly clean-up could be devastating to the finances of a small farm.

We respectfully request that you re-consider the implementation deadline, continue to dialogue with the agricultural community to answer their questions, and ensure that the rule is not overly burdensome or confusing. We believe this will help avoid the rule's unintended consequences. We appreciate your attention to this important matter.

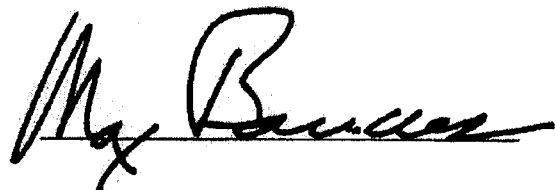
Sincerely,



James M. Inhofe  
United States Senator



Kent Conrad  
United States Senator





Lamar Alexander

Jim Johnson

John Barrasso

Ang Klobucher

Kay Blunt

Max G. Garsim

John Bozeman

Gene McCasill

~~205~~

to Benjamin Nelson

Sally Chavkin

Mark Ryzor

Thad Carter

John Cornyn

Mike Cryer

Michael B. Eiji

F. R.

Chuck Grassley



John Town

John Town

Mike Johnson

Ron Johnson

Richard A. Sugar

Jerry Moran

Lee Mackintosh

Jim O'Rourke

MA

John A. Lunn

Dan Vitter





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

**OCT 12 2011**

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

Dear Senator Johnson:

Thank you for your letter of June 27, 2011, to the U.S. Environmental Protection Agency regarding the Spill Prevention, Control and Countermeasure (SPCC) rule. In your letter, you cited concerns with the implementation timeline for the SPCC rule for farmers and indicated that farmers need additional time to comply with the rule revisions. I understand your concerns and I appreciate the opportunity to share important information about assistance for the agricultural community.

By way of background, the SPCC rule has been in effect since 1974. The EPA revised the SPCC rule in 2002 and further tailored, streamlined and simplified the SPCC requirements in 2006, 2008 and 2009. During this time, the EPA extended the SPCC compliance date seven times to provide additional time for facility owner/operators to understand the amendments and to revise their Plans to be in compliance with the rule. The amendments applicable to farms, among other facilities, provided an exemption for pesticide application equipment and related mix containers, and clarification that farm nurse tanks are considered mobile refuelers subject to general secondary containment like airport and other mobile refuelers. In addition, the agency modified the definition of facility in the SPCC regulations, such that adjacent or non-adjacent parcels, either leased or owned by a person, including farmers, may be considered separate facilities for SPCC purposes. This is relevant because containers on separate parcels (that the farmer identifies as separate facilities based on how they are operated) do not need to be added together in determining whether they are subject to the SPCC requirements. Thus, if a farmer stores 1,320 US gallons of oil or less in aboveground containers or 42,000 US gallons or less in completely buried containers on separate parcels, they would not be subject to the SPCC requirements. (In determining which containers to consider in calculating the quantity of oil stored, the farmer only needs to count containers of oil that have a storage capacity of 55 US gallons and above.)

Your letter expresses concern about a lack of Professional Engineers (PE) available to certify SPCC Plans. However, most farmers do not need a PE to comply with the SPCC requirements. When the SPCC rule was originally promulgated in 1973, it required that every SPCC Plan be PE certified. However, the EPA amended the SPCC rule in 2006, and again in 2008, to create options to allow qualified facilities (i.e. those with aboveground oil storage capacities of 10,000 gallons or less and clean spill histories) to self-certify their Plans (no PE required) and, in some cases, complete a template that serves as the SPCC Plan for the facility. The SPCC rule requires that the owner or operator of the facility (in this case, a farm) prepare and implement an SPCC Plan. The Plan must be maintained at the location of the farm that is normally attended at least four hours per day. The EPA updated the Frequent Questions on the SPCC Agriculture webpage to include this clarification.

Additionally, during development of the SPCC amendments EPA and the U.S. Department of Agriculture (USDA) gathered information that indicated that approximately 95 percent of farms covered



by the SPCC requirements are likely to qualify to self-certify their Plan—that is, no PE certification. Farmers that require the use of a PE and have difficulty finding one before the compliance date may contact the EPA Regional Administrator for the region in which they are located and request a time extension to amend and prepare an SPCC Plan.

EPA understands the issues raised by the farm community and is currently evaluating the best approach to resolve the identified issues. We are working hard to explore viable options for addressing the concerns you have raised. At a minimum, as noted above, those farmers who cannot meet the November 10, 2011, compliance date may request an extension as provided for specifically under 40 CFR 112.3 (f), which states:

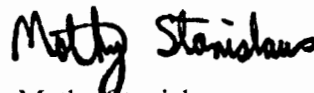
*“ Extension of time: The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment of a Plan thereto, beyond the time permitted for the preparation, implementation, or amendment of a Plan under this part, when he finds that the owner or operator of a facility subject to the section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees....”*

Among the options we are exploring is an appropriate and expeditious process by which such an extension could be of value in addressing the legitimate concerns raised on behalf of agricultural producers.

The Frequent Questions on the EPA’s SPCC for Agriculture webpage reflect this information to ensure that farmers are aware that an extension is possible and to describe the process to request such an extension. The address for that website is [http://www.epa.gov/emergencies/content/spcc/spcc\\_ag.htm](http://www.epa.gov/emergencies/content/spcc/spcc_ag.htm). We will continue to explore opportunities that would trigger approval of such exemption requests and will investigate mechanisms to help farmers request an extension.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA’s Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We also welcome your suggestions for additional outreach and compliance assistance approaches.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, slightly slanted style.

Mathy Stanislaus  
Assistant Administrator



**Congress of the United States**  
**Washington, DC 20515**

October 7, 2011

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1201 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing to strongly urge you to honor a request from multiple towns and cities in Wisconsin to meet with your staff to discuss the proposed National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, otherwise known as the Boiler MACT rule.

It is our understanding that the Wisconsin Department of Natural Resources contacted Dr. Susan Hedman, the EPA Administrator for Region V, on May 9, 2011 supporting a meeting between your staff and representatives of Wisconsin's towns and cities. Knowing that these local units of government have contacted you repeatedly to request a meeting, we write to express our strong support for this meeting as well.

Towns and municipalities already suffer from declining tax bases due to the struggling economy, and so often small towns and their governments are dependent on one industry for local jobs and tax revenues – in this case, northern Wisconsin relies heavily on the forest products industry. If the Boiler MACT rule is enacted in its current form, it could be devastating to small communities and institutions in Wisconsin.

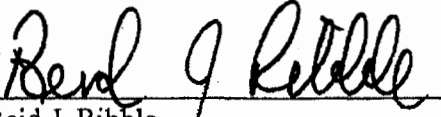
More broadly, Wisconsin's manufacturing industry employs more than 430,000 individuals and roughly 18 percent of the state's overall economy. Recent estimates have concluded that this rule could cost Wisconsin businesses, schools, public health and government institutions hundreds of millions of dollars in compliance costs and jeopardize more than ten thousand jobs. Moreover, the number of jobs in Wisconsin's forest products industry has already declined from 103,000 in 2006 to 55,000 jobs this year.

As such, we believe it is extremely important that local units of government affected by this rule have a voice in its creation, and adoption of any revisions the rule may be presently undergoing. Further, the EPA can only benefit from meeting with affected governments to gain a greater understanding of the rule's overall effects on job creation and local economies as well as implementation and compliance costs for affected companies.

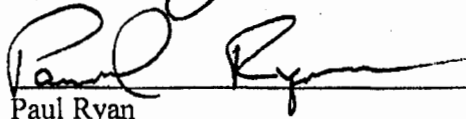


President Obama, through Executive Order 13565, has asked all federal departments and agencies coordinate the review of existing and pending regulations to determine their effectiveness. We believe that an open and transparent rule-making process is a positive step in the direction of allowing the American people to voice their opinions on government actions. We would be happy to assist in coordination of a meeting between your agency's staff who are drafting the revisions and representatives of Wisconsin towns who have notified the agency of their intent to coordinate drafting of the rule. Please let us know if we can help your office in any way.

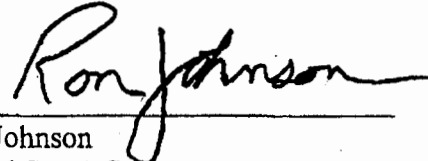
Sincerely,



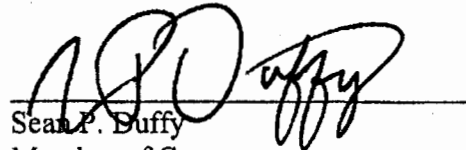
Reid J. Ribble  
Member of Congress



Paul Ryan  
Member of Congress



Ron Johnson  
United States Senator



Sean P. Duffy  
Member of Congress





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 14 2011

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of October 7, 2011, co-signed by three of your colleagues, addressed to Administrator Lisa Jackson in which you request that the U.S. Environmental Protection Agency meet with representatives of towns and cities in Wisconsin regarding EPA's reconsideration of the air toxics rule for industrial, commercial, and institutional boilers and process heaters (the Boiler MACT). The Administrator asked that I respond to your letter.

As you may know, on December 2, 2011, Administrator Jackson signed the proposed reconsideration of the Boiler MACT standards that were originally finalized in February 2011. There will be a sixty day comment period on the proposal once it appears in the Federal Register. During this comment period, we are committed to engaging in a public process and will be considering input from all stakeholders, including input from your constituents. Ronna Beckmann, the EPA Region 5 Intergovernmental Liaison, has been in touch with a representative from the Wisconsin communities to set up the requested meeting for early January. If you have further questions, please contact me or your staff may call Ronna at (312) 886-0689.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over the typed name.

Gina McCarthy  
Assistant Administrator



United States Senate  
WASHINGTON, DC 20510

July 30, 2013

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

The Honorable Sylvia Mathews Burwell  
Director  
The Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

Dear Administrator McCarthy and Director Burwell:

We are writing to you regarding a pending EPA regulation that could disproportionately affect the sanitary ware industry in our states. It is our understanding that a pending regulation for the Maximum Achievable Control Technology for clay ceramic manufacturing processes (Clay MACT) may be structured in a way that will significantly and disproportionately impact manufacturing of these products in each of our states.

Senators from Wisconsin, Texas and South Carolina first expressed these concerns to the U.S. Environmental Protection Agency in a March 2011 letter. While several court cases since have addressed some of the issues raised in that letter, there still are issues that EPA should address in its final stages of developing the Clay MACT rule.

Although we support efforts to address issues related to air emissions as required by amendments to the Clean Air Act (CAA), we request that the EPA work to produce a fair and achievable Clay MACT rule that reflects Congress' intent both to protect public health and the environment and to preserve jobs in communities throughout the country. As EPA currently works to complete a draft rule by February 6, 2014, we are concerned that the final rule will impose unworkable restrictions on manufacturers already confronting significant economic challenges and off-shore competition. Given our country's fragile economic recovery, this issue is critical to the continued viability of sanitary ware manufacturers and the thousands of jobs these companies support.

When it is crafting the Clay MACT rule, we ask that the EPA make use of the discretion it has to set standards that accomplish the goals of the Clean Air Act while not needlessly placing thousands of American jobs in jeopardy. These areas of discretion include:

- **Appropriate subcategories.** It is our understanding that the manufacture of ceramic tile is substantially different from the manufacture of sanitary ware. Therefore we urge EPA to use its discretion to establish separate ceramic tile and sanitary ware subcategories.



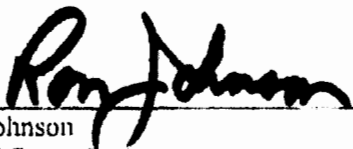
This will ensure that the resulting MACT floors will appropriately reflect the differences between these manufacturing processes.

- **Health threshold standard.** Section 112(d)(4) of the CAA provides the EPA the flexibility to set emission standards for pollutants that do not pose a health risk if their concentrations are below an established safe threshold. We urge EPA to make use of this "health threshold" discretion provided by Congress to minimize unnecessary controls and costs when public health and the environment already are safeguarded.

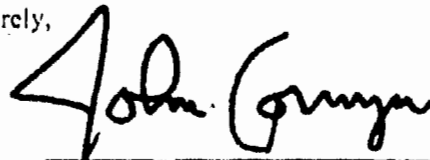
Based on a peculiarity of the CAA, three sanitary ware manufacturing facilities in our states are the only sanitary ware facilities in the United States that will be affected by these provisions of the Clay MACT rule. U.S. competitors will not face the same capital investment of more than \$6 million (plus \$1 million per year in operation and maintenance expense) to achieve compliance with this pending rule. This competitive disadvantage makes it significantly more difficult for these employers to sustain manufacturing operations in the United States – and specifically in our states.

Again, we urge EPA to consider using its discretion to craft responsible standards that ensure that the environment and public health are protected without causing undue economic harm to our economy as it continues to recover from the worst economic downturn in decades.


Sincerely,



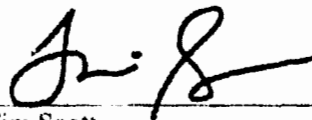
Ron Johnson  
United States Senator



John Cornyn  
United States Senator



Lindsey Graham  
United States Senator



Tim Scott  
United States Senator





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of July 30, 2013, to the U.S. Environmental Protection Agency regarding the development of a regulation that would potentially affect the Kohler Company. I have been asked to respond on the agency's behalf. As you noted in your letter, this regulation could potentially affect sanitary ware industry in your state, which includes the Kohler Company.

The EPA is developing a proposed Maximum Achievable Control Technology (MACT) regulation for the Clay Ceramics Category under section 112 of the Clean Air Act (CAA). Our anticipated dates for completion are subject to a court order, with a proposed rule due February 6, 2014, and the final rule due December 18, 2014.

The EPA is currently gathering and analyzing information for this category, and as part of our information gathering effort, we have had a number of positive interactions with the Kohler Company, including site visits to their Spartanburg, South Carolina and Kohler, Wisconsin facilities. We appreciate the input we received from Kohler Company and we will include it with the other data we receive as we proceed with our regulatory analysis. Our analysis of the information we gather will help determine whether it would be appropriate and legally defensible to establish separate subcategories for ceramic tile and sanitary ware manufacturing. Regarding a health threshold standard under CAA section 112(d)(4), the EPA will consider all the appropriate regulatory flexibilities available under the CAA throughout the regulatory development process.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "J. McCabe".

Janet G. McCabe  
Acting Assistant Administrator



AL-13-000-8117

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP  
WASHINGTON, DC 20510-6350

July 23, 2013

Ms. Gina McCarthy  
Administrator  
U.S. Environment Protection Agency  
Mail Stop 5401-P  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: EPA Proposed Rule: Revisions to Existing Requirements and New Requirements for  
Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301)

Dear Administrator McCarthy:

We are writing you in regards to the U.S. Environmental Protection Agency's (EPA) proposed rule amending 40 CFR Parts 280 and 281; Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301), published in the Federal Register on November 18, 2011. In light of the regulatory cost impact of the proposed rule may have on small businesses, we respectfully request that the EPA convene a Small Business Advocacy Review (SBAR) panel to reanalyze the impact of this rule on small business and prepare an Initial Regulatory Flexibility Analysis (IRFA), before finalizing the proposed rule.


The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires the EPA to convene a Small Business Advocacy Review (SBAR) Panel, prior to the publication of an Initial Regulatory Flexibility Analysis, to collect input towards determining whether a rule is expected to have a significant economic impact on a substantial number of small entities. An agency covered under SBREFA, such as the EPA, may circumvent this requirement if it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

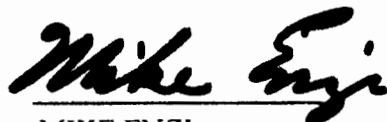
After considering the economic impact of the proposed rule on small businesses, as required by the RFA, the EPA certified that the proposed rule would not have a significant economic impact and determined small business motor fuel retailers would experience an impact over 1 percent of revenues but less than 3 percent of revenues. However, according to some industry experts, annual compliance costs may reach as much as approximately \$6,900, and may negatively impact approximately 60 percent of the convenience store industry comprised of single-store, mom-and-pop, businesses. We are concerned that the Agency's estimated annualized compliance costs of \$900, included as part of the EPA's certification required under the RFA, may be significantly underestimated.





Additionally, the EPA stated in its certification that it conducted extensive outreach in order to determine which changes to make to the 1988 regulations and that it worked with representatives of owners and operators of underground storage tanks and reached out specifically to small businesses. Accordingly, we respectfully request information regarding the extent of that outreach, specifically when and in what manner that outreach was conducted. We also request information regarding the "representatives of owners and operators" and small businesses with which the Agency "worked" as part of this certification. Additionally, given the potential cost impact that this proposed rule would have on small businesses, and to maintain the spirit of the law as Congress intended, we respectfully request that the Agency form a SBAR Panel with small entity representation pursuant to the requirements set forth under the law and prepare an IRFA reanalyzing the impact of this rule on the small business community.

Sincerely,

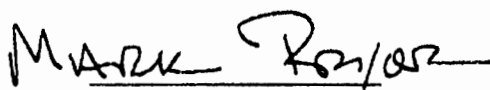
  
MARY L. LANDRIEU  
Chair


  
MIKE ENZI  
Member

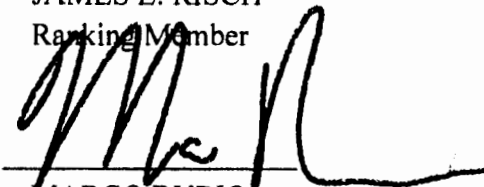
  
DEB FISCHER  
Member

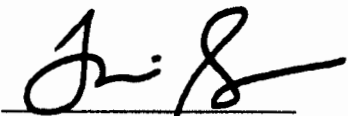
  
HEIDI HEITKAMP  
Member

  
RON JOHNSON  
Member

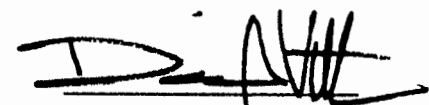
  
MARK L. PRYOR  
Member

  
JAMES E. RISCH  
Ranking Member

  
MARCO RUBIO  
Member

  
TIM SCOTT  
Member

  
JEANNE SHAHEEN  
Member

  
DAVID VITTER  
Member





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

NOV 23 2013

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of July 23, 2013, regarding the proposed revisions to the U.S. Environmental Protection Agency's (EPA) underground storage tank regulations. Knowing that the majority of our regulated entities are small businesses, we agree it is important to recognize potential impacts to this sector. This was one of the main reasons why, when drafting the proposal, we made a concerted effort to propose provisions which would not require costly retrofits to existing underground storage tank (UST) systems, yet would help ensure protection of public health and the environment.

The EPA carefully evaluated the costs associated with the proposal and explained the agency's analysis in the regulatory impact assessment (RIA). Our analysis determined that the potential costs of the proposal did not reach a level that would require convening a Small Business Advocacy Review Panel. Although EPA did not convene a Panel, we sought extensive stakeholder input to help inform our rulemaking proposal.

Prior to the November 2011 proposal, the EPA engaged in a multi-year effort with stakeholders to identify appropriate updates and modifications to the UST regulations. Before the EPA started to draft regulatory language, the agency reached out to potentially affected parties to ask for their input on what changes to make to the UST regulations. Starting in March 2008, the EPA had conference calls, in person meetings, and shared emails with stakeholders. The EPA reached out to petroleum marketers and other owners and operators of UST systems, equipment manufacturers, vendors and service providers who work on the equipment, among others. Specifically, the EPA met with industry representatives of Petroleum Marketers Association of America (PMAA), American Petroleum Institute (API), National Association of Convenience Stores (NACS), SIGMA, National Association of Truckstop Owners (NATSO) and the Petroleum Transportation and Storage Association (PTSA). In addition to meeting with these stakeholders, the EPA also met with several individual marketing, equipment and service companies. The EPA held a series of in person meetings with these groups to gain their input on potential changes to the UST regulations. The feedback included information about field experience with UST system equipment, requests not to require extensive retrofits, and general support for a focus on operations and maintenance activities. These meetings were held March 17, 2008, April 17, 2008, June 18, 2008 and November 18, 2008.

The EPA documented a list of all of the ideas submitted by stakeholders during these meetings as well as through email. In January 2009, the EPA emailed this list of potential changes to the UST regulations to all stakeholders, and asked for their comments on the ideas. Based on all of the comments received in

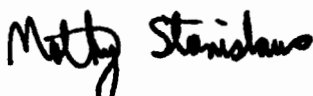


response to the January 2009 email, the EPA narrowed the list of potential changes to the UST regulations. In June 2009, the EPA emailed the narrowed list to stakeholders. We invited stakeholders to submit their thoughts to us and to let us know if they would like to set up a phone call to discuss any of the issues. The EPA met with all industry representatives who asked to do so. Before, during, and since the end of the rulemaking comment period, we have held more than 100 meetings with stakeholders. From the list that the EPA developed through extensive stakeholder input, we drafted the proposal. In addition to meeting with all interested stakeholders, the EPA worked with the Small Business Administration's Office of Advocacy (SBA) before the proposal was published as well as during the public comment period. Following the EPA's rulemaking process, before publishing the proposal in the federal register, all other federal agencies were given an opportunity to review and comment on the proposal. SBA was an integral part of this process. In addition, we worked with SBA during the public comment period. SBA brought to our attention that many small businesses were confused by the proposed changes to wastewater treatment tanks. The EPA and SBA worked together to develop explanatory materials on these UST systems to provide the clarity sought by small business.

In order to ensure that members of the public had an opportunity to comment on the proposal, the EPA extended the comment period from 90 to 150 days. The agency takes the comments we receive during regulatory comment periods very seriously. After receiving comments, the EPA worked diligently to understand industry's cost information comments so that we could thoroughly evaluate our cost analysis. The EPA appreciates the detailed response from commenters, and has fully considered the comments including the compliance costs submitted by industry representatives. We are currently working to determine the appropriate path forward using the comments we received to help inform our decision making. Some of the changes to the proposal that the EPA is considering would reduce the costs of the final rule. We share your concern about the potential burden on small businesses and are working to minimize the costs while we maintain appropriate public health and environmental protection.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at [Snyder.Raquel@epa.gov](mailto:Snyder.Raquel@epa.gov) or (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, slightly slanted style.

Mathy Stanislaus  
Assistant Administrator



AL-11-000-1357

# United States Senate

WASHINGTON, DC 20510

January 27<sup>th</sup>, 2010

The Honorable Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

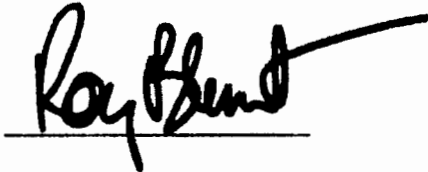
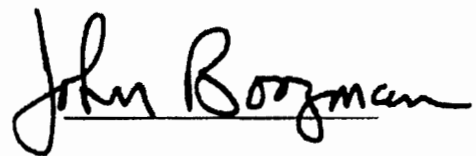
As newly elected Senators, we look forward to working with you in the 112<sup>th</sup> Congress. At this time, however, we are writing to echo concerns recently expressed by a bi-partisan group of 49 Senators during the 111<sup>th</sup> Congress on EPA's proposed Maximum Achievable Control Technology (MACT) rules, which affects boilers and process heaters.

We are concerned that even recently installed boilers cannot meet the requirements set forth in the proposed rule. The rule appears to be based on a "super" boiler that does not currently exist. As a result, these proposed boiler MACT rules are expected to cost billions of dollars and would put a tremendous number of jobs at risk. The manufacturing industry has been hit particularly hard by our struggling economy and while this proposal would have an effect on jobs from many sectors, manufacturers would be affected the most. In addition, the proposal's biomass standards significantly undercut the potential to use this important source of renewable energy and are at odds with the popular promotion of renewable energy sources.

EPA is tasked with protecting and enhancing our nation's air quality under the Clean Air Act, and we ask you to consider revisions to the proposed rules that will not only protect the environment, but also preserve jobs. Congress gave EPA latitude in certain areas to balance the economic impact with the health effects of such rules. We believe EPA should consider using this health-based standard to adjust their approach to Boiler MACT, which is specifically authorized by section 112(d)(4) of the Clean Air Act.

We are committed to protecting the jobs of hardworking Americans that recently elected us and we believe EPA should revise the rule to enact emissions standards that are actually achievable by real-world boilers. We support EPA's efforts to address health threats from air emissions and we are hopeful that these regulations can be crafted in a way that will benefit the environment and not harm existing jobs.

Sincere Regards,

A handwritten signature in black ink, appearing to read "Roy Blunt", written over a horizontal line.A handwritten signature in black ink, appearing to read "John Boozman", written over a horizontal line.



Rob Austin

Ron Johnson

Jerry Moran

Kelly Cigarette

Pat Dooney

Rand Barf

Paul Marchione

Don Coats

Clankin

Mr R

John Hoven





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB - 2 2011

THE ADMINISTRATOR

The Honorable Ron Johnson  
United State Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your January 27 letter regarding the proposed standards for controlling hazardous air pollutant emissions from industrial, commercial, and institutional boilers and process heaters ("Boiler NESHAP"). You raise important concerns, and I take them seriously.

At the outset, I should note that the rulemaking at issue is not discretionary. In Section 112 of the Clean Air Act, Congress directed EPA to establish these standards. EPA issued its proposal after many years of delay, and in order to meet a deadline set by the U.S. District Court for the District of Columbia. EPA is working diligently to issue these standards by February 21, 2011, to meet the Court's most recent deadline.

I appreciate the support you expressed for EPA's efforts to address health threats from air pollutant emissions. Many of the facilities in question are located in close proximity to neighborhoods where large numbers of people live and large numbers of children go to school. EPA estimates that the new standards will cut the facilities' toxic mercury emissions in half and, in the process, reduce their annual emissions of harmful sulfur dioxide and particulate matter by more than 300,000 tons and more than 30,000 tons, respectively.

Those reductions in air pollution will, each year, avoid an estimated 2,000 to 5,100 premature deaths, 1,400 cases of chronic bronchitis, 35,000 cases of aggravated asthma, and 1.6 million occurrences of acute respiratory symptoms. EPA estimates that Americans will receive five to twelve dollars in health benefits for every dollar spent to meet the standards.

You also express concern about the ability of sources to meet the proposed standards. EPA's final standards will be based on a very careful review of the large volume of relevant data we received, and thus will be more reflective of operational reality than the proposed standards would have been. Section 112 of the Clean Air Act directs EPA to calibrate the standards for each category or subcategory of facility to the emissions control that well-performing existing facilities in that category or subcategory are currently achieving. The same section of the statute identifies the types of information that are necessary to justify the establishment of any separate subcategory. In an effort to establish separate subcategories wherever appropriate, and to calculate accurately the standards for each subcategory, EPA asked the affected companies and institutions for technical data about their facilities long before the court-ordered deadline for



publishing a proposal. As is often the case in Section 112 rulemaking efforts, however, EPA did not receive much data. While the agency was not left entirely lacking in relevant information, the limited response from affected businesses and institutions did make it difficult for EPA to delineate subcategories and calculate standards that fully reflected operational reality. The agency nevertheless was legally required to publish proposed standards based on the information it had at the time.

Fortunately, a number of potentially affected businesses and institutions responded to EPA's published proposal by giving the agency relevant data that it had not possessed at the time of the proposal. The agency will make exhaustive use of all of the relevant data received during the period for public comment. EPA has learned things that it did not know before about the particulars of affected sectors and facilities. As a result, the standards will be significantly different than what we proposed in April 2010, which is how the rulemaking process is supposed to work.

EPA believes that a number of the changes EPA is making to the standards will deserve further public review and comment. We expect to solicit further comment through a reconsideration of the standards we will issue in February. Through the reconsideration process, EPA intends to ensure that the standards will be practical to implement and will protect the health of all Americans. Existing sources are not required to comply with the standards until 3 years after they become effective, and parties may request that EPA delay the effective date as part of the reconsideration process.

I would like to address your concern that the rulemakings at issue might threaten jobs. In recent months, two industry trade associations issued two separate presentations, each claiming that the rules would cost the U.S. economy jobs. The presentations differ significantly from each other when it comes to the number of jobs that allegedly would be lost. Moreover, the associations' methods for reaching their projections are in several respects opaque and in others clearly flawed. For example, they neglect to count the workers who will be needed to operate and maintain pollution control equipment and to implement work practices that reduce emissions.

On that point, the American Boiler Manufacturers Association ("ABMA") writes the following in its comments on the proposed Boiler MACT Rule:

If properly designed to reflect the broad range of boiler designs and operational conditions, as well as manufacturers' emission guarantee levels, the Boiler MACT will stimulate the creation of jobs in the boiler and boiler-related equipment industry. To the extent that EPA develops a Boiler MACT rulemaking that is achievable in practice for boiler owners and operators, the proposal will create solid, well-paid, professional, skilled and unskilled manufacturing jobs attendant to the upgrade, optimization and replacement of existing boilers around the United States. In addition, service jobs associated with the installation and maintenance of these systems, as well as service jobs associated with required tune-ups and energy assessments will be created. These jobs will be significant



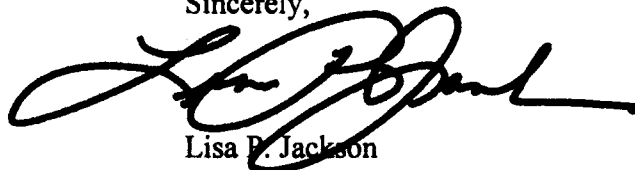
contributions to our local, state and national economies – contributions that must not be overlooked or minimized.

Additionally, you suggest that EPA set a health-based standard, as opposed to a purely technology-based standard. While many businesses are pleased that EPA solicited comment on setting such a standard, pursuant to Clean Air Act Section 112(d)(4), for certain hazardous air pollutants such as hydrogen chloride, those same businesses believe that EPA should have identified the establishment of a health-based standard as the agency's preferred outcome. The discretionary establishment of a health-based standard would need to be based on an adequate factual record justifying it. EPA did not identify a health-based standard as a preferred outcome in the proposal, because the agency did not possess at the time of the proposal a factual record that could justify it.

Finally, you express concern about the proposal's effect on the use of biomass as a source of renewable energy. We recognize that businesses that burn biomass in their boilers and process heaters or are worried that the limited information underlying EPA's proposed subcategories and standards might cause businesses that currently burn renewable biomass to convert to other fuels. Please know that EPA is paying particular attention to the subject of biomass-fired boilers and process heaters as the agency works to develop final standards.

Again, thank you for your letter. If you have additional questions, please do not hesitate to contact me, or to have your staff contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a stylized, flowing script.

Lisa P. Jackson



# United States Senate

WASHINGTON, DC 20510

February 15, 2011

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

As the 112<sup>th</sup> United States Congress commences, we write to share with you our continuing concern with the potential regulation of farm and rural dusts through your review of the National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM10), or "dust." Proposals to lower the standard may not be significantly burdensome in urban areas, but will likely have significant effects on businesses and families in rural areas, many of which have a tough time meeting current standards.

Naturally occurring dust is a fact of life in rural America, and the creation of dust is unavoidable for the agriculture industry. Indeed, with the need to further increase food production to meet world food demands, regulations that will stifle the U.S. agriculture industry could result in the loss of productivity, an increase in food prices, and further stress our nation's rural economy.

Tilling soil, even through reduced tillage practices, often creates dust as farmers work to seed our nation's roughly 400 million acres of cropland. Likewise, harvesting crops with various farm equipment and preparing them for storage also creates dust.

Due to financial and other considerations, many roads in rural America are not paved, and dust is created when they are traversed by cars, trucks, tractors, and other vehicles. To potentially require local and county governments to pave or treat these roads to prevent dust creation could be tremendously burdensome for already cash-strapped budgets.

While we strongly support efforts to safeguard the wellbeing of Americans, most Americans would agree that common sense dictates that the federal government should not regulate dust creation in farm fields and on rural roads. Additionally, the scientific and technical evidence seems to agree. Given the ubiquitous nature of dust in agricultural settings and many rural environments, and the near impossible task of mitigating dust in most settings, we are hopeful that the EPA will give special consideration to the realities of farm and rural environments, including retaining the current standard.

Thank you for your consideration of this important matter.



Sincerely,

Dick Sugar

Herb Conrad

Michael B. Egi

Jim Lohlf

John Eisinger

Jerry Moran

Dan Coats

Sam Bond

Mike Johnson

Jeff Lesion

Jimmy

John Boorman

John & Susan

Paul Calman



Rob Antman

Mark

John Hoven

Ray Bent

Mark Royce

Th W

Mike Crago

John Barrasso

Jon Test

Cine McCasill

Jim Johnson

Al Franken

Ang Klobuchar

John Conyn

Ron Johnson

Pat Roberts



Clara Kim

Lydia Wicker

to Benjamin Nelson





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**APR 14 2011**

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your letter of February 15, 2011, co-signed by 32 of your colleagues, expressing your concerns over the ongoing review of the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The Administrator asked that I respond to your letter.

I appreciate the importance of NAAQS decisions to state and local governments, in particular to areas with agricultural communities, and I respect your perspectives and opinions. I also recognize the work that states have undertaken to improve air quality across the country. The NAAQS are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture or rural roads). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

No final decisions have been made on revising the PM NAAQS. In fact, we have not yet released a formal proposal. Currently, we continue to develop options, including the option of retaining the current 24-hour coarse PM standard. To facilitate a better understanding of the potential impacts of PM NAAQS standards on agricultural and rural communities, EPA recently held six roundtable discussions around the country. This is all part of the open and transparent rulemaking process that provides Americans with many opportunities to offer their comments and thoughts. Your comments will be fully considered as we proceed with our deliberations.

Under the Clean Air Act, decisions regarding the NAAQS must be based solely on an evaluation of the scientific evidence as it pertains to health and environmental effects. Thus, the Agency is prohibited from considering costs in setting the NAAQS. But cost can be - and is - considered in developing the control strategies to meet the standards (i.e., during the implementation phase). Furthermore, I want to assure you that EPA does appreciate the importance of the decisions on the PM NAAQS to agricultural communities. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities.



Again, the Administrator and I thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,



Gina McCarthy  
Assistant Administrator



**Congress of the United States**  
Washington, DC 20510

May 5, 2011

The Honorable Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

We are writing to you on behalf of one of our constituents, the Kohler Co., a major employer in our states. It is our understanding that a pending revision of regulations regarding the Maximum Achievable Control Technology for clay ceramic manufacturing processes (Clay MACT) may be structured in a way that significantly and disproportionately impacts Kohler.

We are concerned that there will be detrimental impacts for sanitary ware manufacturers like Kohler if the final rule does not take into account the uniqueness of this industry. We all support efforts for cleaner air but believe that these regulations must be fair and achievable. As you work on this revision, we ask you to consider several specific concerns.

There is concern about the process of setting existing source MACT floors given the history of this rule. As you may know, Kohler Co.'s vitreous operations are the only sanitary ware operations in the United States co-located with plastics bathware processes. As a result, it is our understanding that Kohler Co. could be singled out as the only company subject to revised regulations, which could place the company at a distinct competitive disadvantage.

Because of its unique operations, Kohler Co. was the only company that installed pollution control devices specifically to comply with the original Clay MACT rule, which was in force for more than a year before being vacated in 2007. When the rule was vacated by the federal court, the control device was no longer necessary, and Kohler Co. took the control off line, using various mechanical components for other repair applications within the operation. Recently, the EPA required Kohler to re-enable the device to collect data for the revised rule. We are concerned that this data – using decommissioned controls installed only to comply with a vacated rule – may not be representative of existing kilns.

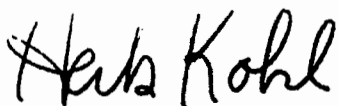
Similarly, we urge you to set a MACT floor that is reflective of real-world pollution controls. We have heard concerns that setting MACT floors for each individual pollutant based on the best technology available for controlling that pollutant will not be realistically attainable if those best technologies cannot be combined in practice. Likewise, we urge you to consider setting appropriate subcategories to respect the considerable difference between manufacturing ceramic tile and sanitary ware.



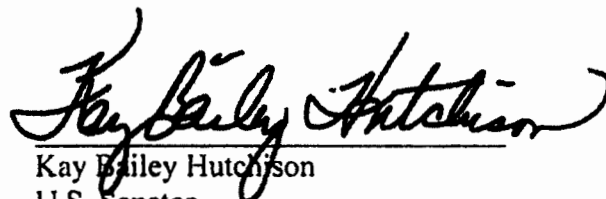
Finally, we believe EPA should consider exercising the "health threshold" discretion provided under section 112(d)(4) of the CAA where applicable to minimize costs in a way that does not threaten public health.

We thank you for your consideration of these factors when setting a final rule, and look forward to working with you to set realistic standards that safeguard public health in a manner that is respectful of the economic costs of compliance.

Sincerely,



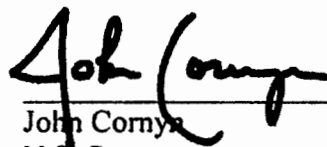
Herb Kohl  
U.S. Senator



Kay Bailey Hutchison  
U.S. Senator



Lindsey Graham  
U.S. Senator



John Cornyn  
U.S. Senator



Ron Johnson  
U.S. Senator





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL - 1 2011

OFFICE OF  
AIR AND RADIATION

The Honorable Ron Johnson  
United States Senate  
Washington, DC 20510

Dear Senator Johnson:

Thank you for your letter of May 5, 2011, co-signed by four of your colleagues, regarding the U.S. Environmental Protection Agency's development of National Emission Standards for Hazardous Air Pollutants (NESHAP) for the clay ceramics manufacturing industry and how this NESHAP might impact Kohler Company.

As you know, the EPA is required to set such standards under section 112(d) of the Clean Air Act (CAA). In 2003, EPA established a NESHAP for the clay ceramics manufacturing industry, but the United States Court of Appeals for the District of Columbia Circuit vacated and remanded that rule in 2007. We are in the process of responding to the remand and are in the initial stages of developing a new rule. In the meantime, however, major sources of toxic emissions in the clay ceramics manufacturing industry remain unregulated under section 112(d) because no federal section 112(d) standards are in place for these sources. As a result, residents of many areas of the country are exposed to toxic air emissions from these facilities every day.

The EPA develops new emission standards to safeguard public health. The clay ceramics manufacturing industry emits a number of air toxics, including dioxins, hydrogen fluoride, hydrogen chloride, and toxic metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium). Exposure to these pollutants has been demonstrated to cause health problems, including cancer.

Like you, we believe that the final rule must be fair, achievable, and legally defensible. Having complete emission data from the clay ceramics manufacturing industry is critical to producing such a rule. Therefore, the EPA has asked the affected companies, including Kohler Company, to submit technical data about their facilities' emissions. The information requested is essential for the EPA to develop a rule that accurately reflects "real world best performing units" and is legally sound. We are currently working with the industry to collect the most accurate information possible and to identify options for achieving the objectives of the CAA while minimizing the economic impact on clay ceramics manufacturers and not imposing unnecessary regulatory costs.

In your letter, you ask that the EPA create separate subcategories for ceramic tile and sanitary ware and, further, exercise discretion to set a health-based standard under section 112(d)(4) of the CAA. We take your concerns seriously, and we will consider them as we move forward to develop a proposed rule.



We currently intend to issue a proposed rule in the first half of 2012. I would like to reiterate that we are sensitive to the impact that a NESHAP might have on the clay ceramics manufacturing industry. As we move forward, we will consider a variety of options based on the diversity of process units, operational characteristics, and other factors affecting hazardous air pollutant emissions. I can assure you that we will consider the concerns of the clay ceramics manufacturing industry as we develop the proposed rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, stylized flourish at the end.

Gina McCarthy  
Assistant Administrator